were fighting the hardest in the old days and that we are supposed to have coerced most and stopped doctors from working for them, they have made more than any of the rest of them.

I have gone a little further than I should in answering the question your Honor asked me.

The Court: That is all right. Is this the only suit
335 of this sort that has been brought in the country? I heard someplace there was another one. Is there some other suit?

Mr. Marcus: In San Diego, California, there is a case brought by a group health organization. We are not involved in that case, but they have brought an anti-trust case against the medical society in that area.

The Court: I heard there was another case, a case like this, in one of the Atlantic Coast states. I don't know where I heard it, even.

Mr. Marcus: I am not quite certain of that, though.

The Court: How did this case happen to be brought here, in this state, of all the others?

Mr. Marcus: We had a considerable number of complaints from this area, your Honor.

The Court: How does the number of subscribers of OPS compare, as against all competitive hospital associations?

Mr. Jaureguy: I can give you the income which I think would fairly reflect the number of subscribers.

The Court: I mean, in this state.

Mr. Jaureguy: Yes. I think the rates are rather comparable and so—

The Court: You probably have it in amounts, figures.

Mr. Jaureguy: I wish I could do that, your Honor, but I have so many figures in my mind that I am not able to give it that way. OPS has—Offhand I would say OPS has
336 maybe 25 per cent of all of it. That may be away off.

The Court: Square it by referring to sizes. Does it have more than 100,000 subscribers or do the others have more than that?

Mr. Jaureguy: The others have had more income altogether than OPS.

The Court: I am talking about subscribers.

Mr. Jaureguy: I don't think subscribers, your Honor—I think their rates are comparable, so when we have the income I think that probably reflects it.

The Court: 25 per cent is a rather high figure, if we use 100,000. That means 500,000 people in Oregon are subscribers.

Mr. Coughlin: My recollection—It may be I am in error —is that there are about 350,000 people in the state covered by these various types of contracts, which I think the Court referred to. As the trial progresses, we will probably get to this point anyway, but the Oregon Physicians' Service has gone into fields which the so-called commercial groups never went into. The commercial groups stuck to strictly industrial contracts, whereas the OPS has gone into fields which are not industrial, such as the mercantile fields. I think they have a great number of subscribers to contracts in that field, as well as school teachers, and so on and so forth; so OPS has expanded quite a lot in recent years in those fields rather than in the industrial fields.

337 I think OPS has about 100,00 subscribers and my recollection is the rest of them, everybody together has about 350,000.

Mr. Jaureguy: I have these figures as to income, your Honor. For the year 1947 the total income from all associations, or to all associations, reported to the Insurance Department—

The Court: Do they have to report?

Mr. Jaureguy: They have to report.

The Court: To the State Insurance Department?

Mr. Jaureguy: Yes.

The Court: Is that by statute?

Mr. Jaureguy: Yes.

The Court: Are they required to supervise them?

Mr. Coughlin: To a certain extent.

The Court: Is that a new statute?

Mr. Jaureguy: No, that statute is, I think, 1917. It has been amended.

The Court: Then there is legislation going back to that time?

Mr. Jaureguy: Yes. The income for 1947: Oregon Physicians Service, $2,528,511. The total for the state was $8,193,027. The National Hospital Association, $1,363,587; and the Industrial, $870,000.

The Court: What is Dr. Slocum's association?

Mr. Jaureguy: That is Industrial, $870,000.

338 The Court: I thought the National was the one.

Mr. Jaureguy: Dr. Sabin.

The Court: Those are the two leading ones.

Mr. Jaureguy: That is right. I have the figures for other years.

The Court: The theory of the defense is that these are all competitive?

Mr. Jaureguy: Oh, yes. I don't think there can be any question about it that they are.

The Court: They are all competitive with each other?

Mr. Jaureguy: Yes, competing with each other.

The Court: There is active solicitation among these associations?

Mr. Jaureguy: Yes, except I want to make this exception. I am not sure it is contrary to that. As between various county organizations of doctors, they do not compete.

The Court: You mean across county lines?

Mr. Jaureguy: Some county societies have formed what we might call a little OPS for that county.

The Court: Yes. A little OPS.

Mr. Jaureguy: The big OPS does not compete with the little OPS but, aside from that, they are competitive.

The Court: I know a lot about OPA.

Mr. Jaureguy: But as far as all of them competing with Industrial and National and the rest of them, it is
339 right in there on a competitive basis.

The Court: Where does the Blue Cross come in?

Mr. Jaureguy: The Blue Cross in an organization furnishing prepaid hospital service. These are both, I think—

The Court: The Blue Cross sells medical service.

Mr. Jaureguy: That is the Blue Shield.

The Court: No, the Blue Cross sells medical service. I know I rejected it.

Mr. Coughlin: They have some kind of a companion policy.

The Court: That is right. I told my wife to look it up and she couldn't find it.

Mr. Jaureguy: I think that is the Blue Shield in Oregon.

The Court: The Blue Cross.

Mr. Jaureguy: I think some of the organizations have the Blue Cross Emblem.

The Court: They are in this, too. They are part of this case.

Mr. Jaureguy: I didn't think they were in it at all.

The Court: They are mentioned in the pleadings.

Mr. Jaureguy: They are mentioned. I thought you meant in this last connection, your Honor.

The Court: No. They are supposed to be one of the institutions that your clients are obstructing.

Mr. Jaureguy: I don't know that.

The Court: It is so pleaded. Isn't that right, Mr.
340 Marcus. Don't you claim the defendants have engaged in practices which have been described as

monopolistic and, as a result, have been damaging to all of these other hospital associations and the Blue Cross and others?

Mr. Marcus: Yes, your Honor. As to the restraint, we allege it took place with respect to the Blue Cross, as well as the others.

The Court: What is that word?

Mr. Marcus: Restraint, your Honor.

The Court: Restraint. Yes. That is all I can do today. I am very much obliged. I will hear from you again.

Mr. Jaureguy: Has your Honor set this matter for next Monday also?

The Court: I won't right now. I just want to reflect on it.

342 UNITED STATES DISTRICT COURT

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Excerpts From Transcript of Proceedings of May 9, 1949

Portland, Oregon
May 9, 1949
10:00 o'clock A.M.

BEFORE:

Honorable Claude McColloch, *Judge.*

APPEARANCES:

Mr. G. G. Galassi, Attorney, Seattle Office, Anti-Trust Division.

Mr. J. J. Mulvey, Attorney, Seattle Office, Anti-Trust Division.

Appearing on behalf of Plaintiff.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze), of Attorneys for Defendants.

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Mr. Jaureguy: I could not, either. I would like to say two things, your Honor. One of them I referred to the other day at the pre-trial. I might put it this way: I am kind of inquiring around to find out if your Honor is going to permit us to re-try these same disciplinary proceedings we had in 1936. We are perfectly willing to re-try them, and a lot of these documents have to do with that matter. I think

you will find most of the documents that they want are dated back there between 1935 and 1939. Some of them go into matters of the disciplinary proceedings held by the Multnomah County Medical Society in 1936.

The Court: I think we will have to go into it as
346 the Government's theory of the case seems to cover those matters, and I am informing myself, as I go along, as best I can, as to what this contest is about. I had these files over the week end and just last night I read these answers to the interrogatories.

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351 UNITED STATES DISTRICT COURT

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Transcript of Pre-Trial Proceedings of May 25, 1949

Portland, Oregon
Monday, May 23, 1949
A.M.

BEFORE:

Honorable Claude McColloch, *Judge.*

APPEARANCES:

Mr. Philip Marcus, Special Assistant to the Attorney-General.

Mr. Charles Whittinghill, Attorney, Seattle Office, Anti-Trust Division.

Mr. J. J. Mulvey, Attorney, Seattle Office, Anti-Trust Division.

Mr. G. G. Gallassi, Attorney, Seattle Office, Anti-Trust Division.

Mr. Robert H. Weinstein, Attorney, Seattle Office, Anti-Trust Division.

Mr. Victor E. Harr, Assistant United States Attorney.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze) and Mr. John J. Coughlin (Griffith, Peck, Phillips & Coughlin), Attorneys for Defendants.

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352 TRANSCRIPT OF PRE-TRIAL PROCEEDINGS

(RESUMED)

Mr. Marcus: May it please the Court, we are here this morning to report on the status of the pre-trial matters and also with respect to interrogatories.

Since the last pre-trial conference we have served upon the defendants' counsel additional proposed stipulations of fact.

Defendants' counsel have stated they would not be able to sit down with us to discuss these proposed stipulations until after today. They, thus far, have not given us any counter-proposals to consider.

A deposition has been taken by the defendants of Mr. C. C. Bechtold who is connected with the National Hospital Association. In connection with that deposition, defendants' counsel asked for and were allowed to examine documents which we had procured from Mr. Bechtold.

Defendants' counsel did not offer any of those documents in evidence, but have agreed on the authenticity of most of those documents. That is about all I can say, your Honor, with respect to the status of the pre-trial conference matters. Subject to the need of preparing for trial, the date of which is quite imminent, we are still prepared to sit down with counsel for the defendants to try to work out a pre-trial stipulation.

353 Mr. Jaureguy: I have here a list of several things that I would like to bring up today, your Honor. I do not know how you want to proceed.

The Court: Strike your own course.

Mr. Jaureguy: In the first place, we have gone over, rather carefully, the stipulation that was brought into court the last time and which they presented to us then for the first time, and have made certain corrections of the facts, that is, what we believe to be the facts, so as to make it conform to the facts, and have also changed it by adding certain matters that we felt were material to this case, so as to give the entire picture. Therefore, we are now tendering to counsel two copies of their stipulation, as revised by us. Your Honor, the last time, asked to have theirs handed up to your Honor. Would your Honor care to have ours?

The Court: Yes. Go on to your other points. I will not take the time to read this now.

Mr. Jaureguy: Another thing I would like to bring up is this: Among the documents which the Government got from the files of the OPS and had photostated, there were certain documents that refer to certain patients who had been treated by doctors, referring to them by name, and, to some slight extent, the ailments they had and the treatments they have had.

I anticipate that during the trial there may be quite a lot of that, some by the Government and some by the
354 defendants, where we feel it is necessary to refer to situations which involve treatment of definite patients.

We would like to suggest to the Court and to counsel that an effort should be made not to go into the record or have placed into the record the names of any specific patients.

Our suggestion would be this: When we have a document which names patients by name, that the names be obliterated, perhaps by pasting over them with a little piece of paper, and that a witness, in speaking of a patient, shall speak of him by a number or by a letter or a fictional name or something of that kind.

That would be my suggestion of the way to do it. I certainly feel we should go as far as we can in not mentioning things which are really confidential.

Mr. Marcus: I would say certainly to the extent that that is possible we will be willing to do so. We may even be able to use letters or some other device. I do not think there will be any trouble over that.

Mr. Jaureguy: Then I take it nobody will intentionally at least—I understand that it may be done through inadvertence—that nobody will intentionally at least mention the name of any patient at all, and we will try to work out a system whereby it will not be necessary for counsel or witnesses to mention patients by name.

Mr. Marcus: It may, I suppose, be necessary to
355 refer to particular individuals by name, but I think, in referring to patients, we may, by agreement, eliminate particular names and use some other symbol.

Mr. Jaureguy: Along the same line, we have just today—. And I am sorry for the delay; if I needed to expand on that, I could show it was unavoidable—served upon the plaintiff and filed with the Clerk here the answer of Multnomah County Medical Society to the interrogatories.

One of these interrogatories asked us to give the names of all doctors against whom any charges of unethical con-

duct had been filed with the Multnomah County Medical Society, together with the details of the charges and the disposition of the charges, and we have furnished all that information in every detail.

However, instead of putting all that information in the answer itself, we state in the answer that we are handing them herewith a complete list, with a complete answer to that question, but we are not filing it with the Clerk, but are bringing into court the original of the document which we handed them, which is available to the Court, and will hand it up to the Court at any time the Court wishes.

I would like to make the same suggestion there. Mr. Coughlin advised your Honor at one time that the practice of the Multnomah County Medical Society has always been this: If they have disciplinary proceedings against
356 a doctor, a member of the Society, whether they expel the member or not, it is not made public by the Society; if it is made public at all, it is made public by the doctor.

Mr. Marcus: On that score I would suggest that we wait and see what the particular situation is that exists. It may be very well that we may have on the stand some of those individuals.

Mr. Jaureguy: That is different. Nevertheless, I do say that we should follow, except for a situation of that kind, the suggestion that I have made. I can understand that either on direct examination or on cross examination, counsel may have occasion to ask a doctor whether charges have been filed against him and whether he was expelled, and things of that kind.

But, except for that, I would like to ask that we adopt the same procedure, whereby the names of those doctors will not be made public, and that could be done in the same manner, I suggest.

Now, along the same line exactly, they have also asked for a list of all doctors who have applied for membership in the Multnomah County Medical Society and to whom membership has not been granted.

In the same manner we have got that list. I am not filing it with the Clerk, but we have the list and will hand it up to the Court, and would like to have the same procedure adopted in connection with those doctors.

Mr. Marcus: We will attempt to cooperate with
357 counsel for the defendants in that respect in every way. Of course, at this stage we just cannot tell whether in some instances it may be necessary to name

persons, but I am sure that can be worked out satisfactorily.

Mr. Jaureguy: Very well. As I understand it, it will be worked out if we can work it out?

Mr. Marcus: If we can, yes.

Mr. Jaureguy: The next matter is a minor matter, a rather minor matter, but I will take it up in order, in the order in which I have these here.

Two or three days ago, Dr. Morris L. Bridgeman, a Portland doctor, called Mr. Coughlin and said he had been subpoenaed by the Government to appear here on the 7th of June. He said he had made plans to attend the American Medical Association Convention and would like to be excused from appearing until he gets back from that convention, which will probably be about ten days later. I wonder if that could be done.

Mr. Marcus: I certainly could agree not to require the doctor's attendance on the 7th. You say ten days later?

Mr. Jaureguy: I understand that is about when they will get back. At any rate, the convention is in Atlantic City.

Mr. Marcus: Well, your Honor, I am willing to say this, that we will reserve calling him until the end of our case. If, by any chance, that should occur before the ten days, I want it understood that we would have to call him,

358 but we will endeavor not to.

Mr. Jaureguy: That is all right, but you have to bear in mind that when you decide to call him he may be in Atlantic City and it will take a day or two for him to get back.

Mr. Marcus: That is right.

Mr. Jaureguy: I don't know as there will any more doctors going, but there are any more in the same situation—

Mr. Marcus: We will attempt to accomodate them but, at the same time, without prejudicing the presentation of our case.

Mr. Jaureguy: If there are any more who call us, should we tell them that they may proceed to Atlantic City but might have a hurry-up call to come back?

Mr. Marcus: That is right, and in that case we would like to have the addresses in Atlantic City where we could reach them.

Mr. Jaureguy: Very well. I take it that they have headquarters there, a convention headquarters. "Care of American Medical Society" would be the best way to reach them, I should think.

The Court: I would think they would be glad to get out of going to one of those meetings. I know I have to go to a lot of meetings.

Mr. Jaureguy: I do not like to say this, but in that respect I think the doctors are different from lawyers.
359 They like to attend these meetings and get an education.

The next thing I have on my list is this: Early in these proceedings, the defendants filed a motion for a more definite statement and the motion was granted in part, and they gave us a rather lengthy "more definite statement," and many of the answers were to this effect, that "Plaintiff does not know of such-and-such," and we would like to ask that the plaintiff now supplement that more definite statement by giving us, based on the information that they now have, the facts as they now believe them to be; in other words, to bring the more definite statement up to date.

I can go through here and call your Honor's attention to some of the situations. I have about eight or ten here listed where they gave answers of that kind.

The Court: Do you want to hear his detail first?

Mr. Marcus: I was going to say on that that I think the convenience of everyone would be more aptly accommodated in that respect if we made a statement a few days before the trial. We are still in the process of receiving information and in the process of interviewing people.

Mr. Jaureguy: I did not mean for them to do it today, but will you, say, a week before the trial, give us a statement on that matter?

Mr. Marcus: To the best of our ability, we will.

Mr. Jaureguy: Then, we can expect it a week be-
360 fore trial or sooner?

Mr. Marcus: To the best of our ability.

Mr. Whittinghill: You mean in all cases of the more definite statement where we said "as we now know" or do you have particular points in mind?

Mr. Jaureguy: I can give you those, but I am not going to restrict you in covering other things.

Mr. Whittinghill: We would like to be restricted by what you want.

Mr. Jaureguy: Then, we can expect it a week be-
Honor? Page 7, Paragraph 6(a),(b) and (c).

Page 13—

The Court: Slower. They are taking them down.

Mr. Jaureguy: —Paragraph 10(e).

Page 21, Paragraph 19(b).
Page 28, Paragraph 23(b), (c).
Page 31, Paragraph 25(b), (c).
Page 32, Paragraph 26(d).
Page 35, Paragraph 27(d).
Page 36, Paragraph 28(b).
Page 40, Paragraph 31(e), (f), (g).
Page 25, Paragraph 36(b).
Page 46, Paragraph 37(a).
Page 50, Paragraph 38(a), (b), (c).
Page 50, Paragraph 39(a), (b), (c).

361 The next thing I would like to bring up is this, your Honor: As your Honor knows, defendants have spent a considerable amount of time and effort in furnishing dozens of pages of answers to interrogatories, and we have set out those facts in there as fully and correctly as we could, and I think it will be appropriate for plaintiff to advise us in which instances they agree with the facts set forth and in which cases they claim the facts are incorrect so that in any case where they claim the facts are incorrect, if we feel the matter is material, we can produce evidence on it. In cases where they admit they are correct, it will relieve us from any necessity of producing evidence.

Mr. Marcus: On that score, I think we would be glad to do that, and I think that can be done between counsel. For instance, you served one set of interrogatories on us this morning.

Mr. Jaureguy: I am not asking that you do that right now, but suppose we say a week before trial. Is that all right?

Mr. Marcus: Yes.

(Intermission)

Mr. Jaureguy: These interrogatories as to the counties, the first fifteen of them are all the same, as to all of the counties; and when Mr. Coughlin and I got them we thought whatever information the counties had was contained in the minutes that had already been turned over to

362 the Government. But in the case of the Multnomah County Medical Society that is not correct. The Multnomah County Medical Society does have information in answer to No. 2 which is not in the various matters or documents that have been turned over to the Government, so we were compelled to answer that the defendants had not been able to gather the information, but we further object to answering that in detail because of the great

amount of work that is involved which could not possibly do anybody any good. We would have to go through a lot of files and records.

That is to give the membership of twelve different committees from January 1, 1936, to the year 1948, inclusive, a period of thirteen years, and as to some of these committees we just feel it is absolutely immaterial, so we want to object to giving those. There are one or two, of course, that are material, the Grievance and Censors, but we do not know what any of the others have anything to do with, so in our answer we have objected to answering on the ground that the matter is too burdensome and expensive and that the information is irrelevant and immaterial anyway.

Perhaps I might read the committees. Public Policy—I am not telling your Honor that this Society has all of these committees. I am merely reading from the interrogatories.

Medical Education in Hospitals; Public Relations; Executive; Resolutions; New Business; Information and Propaganda; Contract Practice; Medical Economics.

363 I might say I have that list in my office and I will have it copied and give you a copy of the Bureau of Medical Economics. Then follow the Committees on Grievance, Publication, Censors.

We think that it is too much of a burden on Mr. Foley, who is a very busy man, to have to dig up all this information.

Mr. Marcus: On that score, your Honor, may I say, in the first instance, that it comes with ill grace at this time for them to make that sort of an objection to these interrogatories.

The defendants have had plenty of time—They have had more than the ordinary time to get that information. These committees, in our opinion, are important committees and, in our opinion, it is not too much to ask to have the names of the members of those committees given to us.

Mr. Jaureguy thinks nothing of burdening us with the responsibility of furnishing further information with respect to a more definite statement, nor with respect to our going over their answers and determining whether or not the facts there alleged are as we know them, and it seems to us in return the least Mr. Jaureguy can do is to give us the information that we have requested.

Mr. Jaureguy: In so far, your Honor, as the burden we are putting on them, if you can call it such, is concerned, when they ask interrogatories they, I take it, vouch for the

fact that the answers are material to the case and,
364. therefore, they are asking for that information, which they themselves have vouched is relevant and material.

In so far as the first part of that is concerned, I realize we should have made this objection sooner. As far as having plenty of time, of course, Counsel must realize that when a certain item of information is demanded there is usually but one person who can get it. Mr. Foley, as it so happens, has had to dig out all the information pertaining to the interrogatories directed to the Oregon State Medical Society; he has had to dig out all the information pertaining to interrogatories as to the Multnomah County Medical Society; he has had to dig out all the documents that they have demanded—As I recall, there are 40 to 50—and he is still working on that, in addition to consolidating all this with respect to these various matters that are involved.

If they can show us how some of these committees will be material, that is a different thing. Mr. Foley can explain to your Honor the general purpose of these various committees and I think your Honor will be convinced that at most there are but two or three of them that are material.

Mr. Marcus;: Do I understand you are willing to give us the names of the members of the committees that you deem relevant?

Mr. Jaureguy: Yes.

Mr. Marcus: Does that include Contract Practice and Policy and Propaganda?

365. Mr. Jaureguy: No. I am advised there isn't any Committee on Information and Propaganda.

Mr. Marcus: Then say so. That is all you have to say in your answer.

Mr. Jaureguy: I understand that, but there are eight here, and we disposed of two or three that way.

The Court: How many seem to you to be relevant?

Mr. Jaureguy: Well, I think Mr. Foley would tell us that Public Policy has nothing to do with it? Could I ask Mr. Foley?

The Court: Yes.

Mr. Clyde B. Foley: I think not.

Mr. Marcus: That committee had charge of putting out one of their bulletins which definitely emphasizes the position of defendants with respect to their attitude against prepaid medical care plans. One such bulletin is the "Medical Reporter."

The Court: Mr. Foley, come over here, will you?

Mr. Foley: Yes.
The Court: Swear Mr. Foley.

CLYDE B. FOLEY was thereupon produced as a witness and, being first duly sworn, was examined and testified as follows:

The Court: Now, Mr. Jaureguy, ask your questions so we can boil this down.

Mr. Jaureguy: During these years, from 1936 to
366 1948, has the Multnomah County Medical Society had a Public Policy Committee?

Mr. Foley: Yes.

The Court: Start in in order there, would you, please?

Mr. Jaureguy: That is the first one.

The Court: All right.

Mr. Jaureguy: What have been its functions?

Mr. Foley: It is a legislative committee, but I think it should be said that there may be at least one instance in which the Public Policy Committee has concerned itself with this problem.

Mr. Jaureguy: So, that would be a one-year committee, membership for one year?

Mr. Foley: That is as I recall it, yes.

Mr. Jaureguy: During this time have they had a Committee on Medical Education in Hospitals?

Mr. Foley: Yes.

Mr. Jaureguy: What has been the experience of that committee?

Mr. Foley: That committee is very inactive, a very inactive committee. As far as I recollect, it has had nothing to do with this problem.

Mr. Jaureguy: Public Relations Committee;—Have they had one?

Mr. Foley: Not an active committee, as far as I recall. That committee has had nothing to do with this problem.

Mr. Jaureguy: Executive Committee.
367 Mr. Foley: There is no Executive Committee.

Mr. Jaureguy: Resolutions Committee?

Mr. Foley: There isn't any Committee on Resolutions of the County Society. I think, if I may say so, in some instances they may have confused the committee structure of the State Medical Society with the County Medical Society. I think that would be particularly true with respect to the Committee on Resolutions, which is a committee of the House of Delegates of the State Society.

Mr. Jaureguy: New Business?

Mr. Foley: That is likewise the same, a committee of the House of Delegates of the State Society, and not a committee of the County Society.

Mr. Jaureguy: Information and Propaganda?

Mr. Foley: I don't know of any such committee in either the State or County Societies.

Mr. Jaureguy: Contract Practice?

Mr. Foley: Contract Practice is not a standing committee of the State or County Societies. I think this would be pertinent, though, to this question: There have been special committees on Contract Practice. It is not a standing committee, however.

Mr. Jaureguy: Bureau of Medical Economics. I beg your pardon. It is the State committees that I have. The last time I thought you asked for that information. Is there a County committee on Medical Economics?

368 Mr. Foley: No, there is not.

Mr. Jaureguy: A Grievance Committee?

Mr. Foley: Yes.

Mr. Jaureguy: A Publications Committee?

Mr. Foley: No.

Mr. Jaureguy: Censors; that is, Board of Censors?

Mr. Foley: Yes.

The Court: Go ahead. You were going to say something, were you?

Mr. Foley: I was going to say that in connection with the various interrogatories there has been considerable confusion between committees, with respect to the State Medical Society and the Multnomah County Medical Society. I think that could be quite readily clarified.

Mr. Jaureguy: Do the names of the members of the Grievance Committee and the Board of Censors appear in the minutes, do you know?

Mr. Foley: Yes, they do, because the Grievance Committee is elected each year by resolution. The resolution, I believe, contains the names. Of course, the Board of Censors is a committee elected annually by the Council of the County Medical Society from its own membership. That appears in the record.

Mr. Jaureguy: I understand. They have had the minutes and gone over them very carefully.

The Court: Do you want to ask any questions?

369 Mr. Marcus: Not particularly, your Honor. I gather from Mr. Foley's remarks that there are in

existence a number of these committees we have asked for. I gather, also, that he takes the position that as to some of these committees they had nothing to do with the matter before your Honor that would be relevant.

Your Honor may recall that at the beginning Mr. Foley said the Committee on Policy had nothing to do with this matter. When I brought up the question of the Medical Reporter, Mr. Foley then apparently refreshed his memory and said, "Yes," that at least for one year that committee did have important functions.

We do not want to be in a position of proving a connection between any of these committees and this conspiracy and then finding ourselves with no information as to the membership of those committees and, again, we press before your Honor the point that these defendants should be required to give us the names of the members of these committees. As to those committees which they say are not committees of the County Society, of course we are not asking for that information. If that is so, that was a mistake on our part.

Mr. Jaureguy: There are some of these committees we do not have; others that we contend are not material. The names, however, appear in the minutes and they have had all the minutes we have been able to find. That is to say, with respect to two.

The Court: What are those two committees?

370 Mr. Jaureguy: Censors and the Grievance Committee.

Mr. Marcus: Your Honor, I haven't gone through all of the documents that we have, but I have gone through a part of them, and in many instances we find that the records show the names of those present at particular meetings only.

The Court: Go ahead. I will rule later. Go ahead with your other troubles.

Mr. Jaureguy: With something else?

The Court: Yes.

Mr. Jaureguy: The next isn't any trouble, but at the last pre-trial conference they wanted us to dig out the House of Delegates of the Oregon State Medical Society. The first thing I knew, a few days ago I found that Mr. Foley had gone through and dug that all out, and then I had my girls yesterday spend all day copying the list, and so I have that here and I will give them a complete list of the House of Delegates.

I will call attention to the fact that the first few names each time is the Council, and that means the Council of the Oregon State Medical Society. For each year that is the first list of names.

Mr. Marcus: May I ask Mr. Foley: Is that a complete list of the membership of the Council for those particular years?

Mr. Foley: Yes.

Mr. Jaureguy: That is all I have on my list here, your Honor.

The Court: Do you have anything you want to
371 speak about, Mr. Marcus?

Mr. Whittinghill: I have one thing, your Honor. At the last pre-trial conference your Honor directed us to make a written report, showing just what it was we wanted. I have prepared it and have it this morning.

I would like to point out on Page 2 of the report, under Interrogatory No. 6, the first three statements thereunder have already been answered. We have subsequently found the information as to those three.

Otherwise, this report points out the extent to which the interrogatories addressed to the Oregon State Medical Society and the Oregon Physicians' Service, to which these defendants objected, have not been answered by means of the FBI file search.

One interrogatory I might point out is Interrogatory No. 10, which relates to the House of Delegates. I don't know whether what Counsel has just submitted now is in answer to that in particular or not. However, I should like to say that plaintiff has already issued subpoenas duces tecum for the production of documents which supposedly will cover all the information that we could get through the FBI file search if we proceed further with this matter. Therefore, we will not press this any further.

Mr. Jaureguy: One thing I omitted when I was speaking about our revision of the stipulation: I want the record to specifically show that both in answering inter-
372 rogatories and in consulting on stipulations of fact and in revising stipulations of fact and in executing stipulations of fact the defendants do not in any case admit that the facts therein set forth are material to this lawsuit. We will ask that such a provision be added as a paragraph to the stipulation.

The Court: Will you resume your seat over here, Mr. Foley?

Mr. Foley: Yes.

The Court: You gentlemen may be looking over what Mr. Jaureguy has handed you while I hear these lawyers.

(The Court then proceeded to the transaction of other business.)

The Court: You asked me to set aside a whole day for this. Of course, there are some other things I can do, but if there is anything else you want to talk about, that is what I am here for.

Mr. Whittinghill: I would like to say one thing. The documents that Counsel just gave us, showing the members of the House of Delegates and the Council, apparently does not have the members of the House of Delegates for the year 1942. It says "Not available."

In that connection I would like to remind your Honor that Mr. Coughlin at the last pre-trial conference suggested that the plaintiff, the Government, would be given the minutes of the House of Delegates, which had not theretofore been made available. Therefore, I would like to suggest
373 at this time that Mr. Coughlin turn those minutes over to us as he promised to do or as he suggested he would do at the last pre-trial conference.

Mr. Jaureguy: Mr. Foley advises us the minutes of the House of Delegates are not kept by the Society. They have one copy and they send it in and Northwest Medicine publishes it, and that is all they have. I think counsel know all about Northwest Medicine.

Mr. Whittinghill: Do I understand Northwest Medicine does have in its files the minutes of the House of Delegates of the Oregon State Medical Society?

Mr. Jaureguy: Only as published in Northwest Medicine. That is the information Mr. Foley has given us.

Mr. Whittinghill: The ones that are not published are still in their files?

Mr. Jaureguy: No, I understand the Society has no minutes of the House of Delegates.

Mr. Foley: Except those printed in Northwest Medicine.

Mr. Jaureguy: They are written up and I suppose, if they were not published, Northwest Medicine threw them in the wastebasket. They have none.

Mr. Foley was of the opinion that they have all been published. If some were not published, he has been misinformed. At any rate, they have no minutes.

Mr. Whittinghill: Very well.

374 The Court: Do you want to talk about this paper that Mr. Jaureguy gave you this morning?

Mr. Marcus: Mr. Jaureguy gave us a number of papers. I don't know which one you are referring to, your Honor.

The Court: The only thing he has referred to is the pre-trial stipulation of facts, revised as suggested by defendants.

Mr. Marcus: Your Honor, I would much prefer having an opportunity to look it over and then to get together with Mr. Jaureguy. I was going to suggest perhaps that we do that tomorrow. Will you be available?

Mr. Jaureguy: Yes, I will be available. I don't know what practice your Honor wants us to follow, whether you want us to have this conference on stipulation of facts in court as a part of the pre-trial procedure or whether you want us to go off by ourselves. The last time we had the same problem up when they handed in their proposed stipulation.

The Court: Well, talk among yourselves first. These particular committees, what are those? I wrote down under No. 1 "Public Policy." I wrote down "One year." What is it they did in one year or didn't do in one year?

Mr. Jaureguy: Mr. Marcus mentioned they did something in one year.

Mr. Marcus: Mr. Foley mentioned it. I was merely emphasizing what Mr. Foley said.

The Court: Come over here where I can talk to
375 you better again, Mr. Foley. What was your reference to one year as to the Public Policy Committee?

Mr. Foley: I think I got that from the list of interrogatories.

The Court: What do you know about, personally?

Mr. Foley: I refreshed my memory from one of the interrogatories here. The number of this is 112 and it is as follows: "Report of Committee on Public Policy, after its study of prepayment plans of medical service and the criteria formulated for evaluating them in accordance with the Principles of Medical Ethics as reported in the minutes of meeting of Multnomah County Medical Society October 3, 1944," and

"113. Report of Committee on Public Policy concerning its study of the Telephone Employees Hospital Association, in January, 1945."

For that reason it is likely that during this particular period, 1944 and 1945, the Committee on Public Policy, which is normally a legislative committee, was assigned this particular thing for some purpose, which I do not now recollect.

Mr. Marcus: It is our understanding that even in earlier years this committee was concerned with the subject matter of this suit. I personally recall that with respect to the Medical Reporter put out by this committee, issued in 1936 and 1937.

The Court: When you say "Legislative committee," do you mean in the whole legislative field, state and otherwise?

Mr. Foley: No, the county societies, they have
376 similar committees.

The Court: Go ahead.

Mr. Foley: The Committee on Public Policy is distinguished as a committee from the Legislative, and they have such committees in both county and state societies.

The Court: Are we talking about the county committees now?

Mr. Foley: The functions are identical.

The Court: What is this next committee, Medical Education?

Mr. Foley: Medical Education.

The Court: The Legislative would have a lot to do with the Contract Medicine. That has kicked up a row in the Oregon Legislature for years.

Mr. Foley: These things referred to here do refresh my memory of the fact that this committee had something to do with Contract Practice. Normally it would not.

The Court: I would say normally it would (if it is a legislative committee. Contract Medicine has been a legislative issue in the Oregon Legislature for years.

Mr. Foley: Normally the County Committee on Public Policy does not concern itself primarily with the State Legislature. That is a function of the statewide committee, it being a statewide matter.

The Court: Have you got the two committees, by chance, mixed up in your mind, in your recollection?

Mr. Marcus: No, your Honor, I do not believe so.
377 With respect again to the "Medical Reporter," it is my understanding that it was a Committee on Public Policy of the Multnomah—

The Court: What is the "Medical Reporter"?

Mr. Marcus: It is a sort of a bulletin which was put out by—

The Court: —the County?

Mr. Marcus: I believe the County, and under the auspices of the Oregon State Medical Society, as well, at least during the years of 1936 and 1937.

The Court: How long have you been Secretary, Mr. Foley?

Mr. Foley: Since 1926.

The Court: The "Medical Reporter" he is speaking about,—you know about that?

Mr. Foley: Yes, it was a publication put out.

The Court: Did the County have something to do with it, the County Society?

Mr. Foley: Some of the material was supplied by the County. It was published, I believe, under the auspices of the State Medical Society.

The Court: What is that second committee, Medical Education? I have written here "Inactive."

Mr. Foley: It is not an active committee. Primarily, the thing that committee does—Occasionally they are asked to inquire as the whether or not a particular hospital reaches the proper standards. Normally it is not an active
378 committee. It is only active on the Council's request for some specific information, but it does not study matters continuously or engage in any major projects.

The Court: I have "Public Relations" marked "Inactive." I have marked "Public Relations" here "Inactive."

Mr. Foley: That is right.

The Court: What is the fact? Tell us about that.

Mr. Foley: Well, your Honor, that is a very vague term.

The Court: I know what the term means—as well as I will ever know. What is the fact about it?

Mr. Foley: This committee deals broadly with matters relating to publicity, as far as the public is concerned. It has activity in connection with press releases and matters of that sort.

The Court: As to No. 5,—As to No. 4, 5, 6 and 7, I have marked "There are no such committees."

Mr. Marcus: I want to make a comment with respect to Mr. Foley's statement as to the inactivity of certain of these committees.

Mr. Foley, do your mean they are inactive now?

Mr. Foley: When I say that, I am speaking of some committees that are more or less active all the time. I would consider the Committee on Public Relations of the County Medical Society as being a committee that has not been active year by year.

The Court: Do they appoint a new committee each
379 year?

Mr. Foley: Yes, committees are appointed annually. The personnel changes, of course.

Mr. Marcus: Some of these committees during the period 1936 to 1937 may have been very active at that particular time?

Mr. Foley: Yes.

The Court: 4, 5, 6 and 7,—I have marked that there are no such committees among the county committees. Executive Committee; Resolution Committee. What is that No. 6? What is the next one?

Mr. Foley: New business.

The Court: That does not mean new doctor business, does it?

Mr. Marcus: We are quite willing to take the word of these defendants that these committees are not county committees.

The Court: 4, 5, 6 and 7 are out, then. No. 8, Contract Practice. That would be right on the beam, wouldn't it? No. 9 is Medical Economics. What does that mean?

Mr. Foley: That is another committee that has not been active at all but embraces things of material interest to the profession. I think that would be pertinent here.

The Court: What is this next one, No. 11?

Mr. Marcus: Publication. I think that committee is concerned with what appears in Northwest Medicine.

The Court: Yes.

Mr. Marcus: And had something to do with respect to the relationship of Northwest Medicine to the de-
380 fendants.

The Court: That is one of the issues in the case.

Mr. Marcus: We will expect to show that is certainly material here, and undoubtedly there will be a question as to the connection of Northwest Medicine with the defendants.

The Court: What is No. 12? "Board of—" what? I wrote it down but I can't read it.

Mr. Coughlin: The Board of Censors.

The Court: Yes. Can you get that in some other way? Did they get these names in some other way?

Mr. Foley: Of course, all the members of the Council constitute the Board of Censors. I don't think they have that in that form.

Mr. Marcus: I think I can clear that up by one question. Has there been a Board of Censors of the Multnomah County Society?

Mr. Foley: Yes.

The Court: Do you have those names from some other source?

Mr. Marcus: No, we do not, your Honor.

The Court: You give them what they want. Answer that when you can, except 4, 5, 6 and 7.

Mr. Jaureguy: Well, I would like to ask Mr. Foley some questions.

The Court: Yes.

Mr. Jaureguy: Do the names of the Grievance Committee and Board of Censors appear in the minutes?

381 Mr. Foley: The Grievance Committee is recreated annually by resolution and the resolution, I think, contains the names of the persons chosen for the particular year in question.

Mr. Jaureguy: What about the Board of Censors?

Mr. Foley: The Board of Censors, that is elected annually by the Council and comes from the Council itself and should appear in the minutes.

The Court: That is all, I guess.

Mr. Jaureguy: Well, now, your Honor wants us to give them all except 4, 5, 6 and 7, and for all these years?

The Court: I was hoping you wouldn't ask me to repeat. Didn't you hear me?

Mr. Jaureguy: I heard you, but I should have requested permission to ask the witness some more questions which might have changed your Honor's view.

The Court: So what? What do you want me to do?

Mr. Jaureguy: I am asking whether you are adhering to your decision that we furnish all except 4, 5, 6 and 7.

The Court: What did he just say?

Mr. Jaureguy: That the members of the Grievance Committee and Board of Censors appear in the minutes, and all the minutes we have been able to find have been turned over to him.

Mr. Marcus: Mr. Jaureguy has added a qualification, "able to find." I supposed Mr. Foley by virtue of his position would be able to furnish us with those names even if they did not appear in the minutes. There must be other

382 places, other persons.

The Court: You get them out of the minutes if you can. You give them 4, 5, 6 and 7, all except 4, 5, 6, 7, 10 and 12. If they don't get what they want to their satisfaction as to 10 and 12, I will deal further with that. I think we better recess now.

(Whereupon the Court proceeded to the transaction of other business, following which further proceedings were had as follows:)

Mr. Jaureguy: Is this case through for the day now?

The Court: If you gentlemen are through.

Mr. Jaureguy: Yes, I am through, but if we are not going to have any more pre-trial conference I want to ask a question, and that is whether your Honor is expecting to have a complete pre-trial order prepared.

Mr. Marcus: Your Honor, Mr. Jaureguy has agreed to meet with us tomorrow, and although I doubt whether we will cover everything tomorrow I think by next week we will be able to come before your Honor and have something to offer to your Honor.

Mr. Jaureguy: Well, I think that counsel thinks that is an answer to my question, but it isn't. I don't think counsel knows what a pre-trial order in his court means, a full-dress pre-trial order.

383 Mr. Marcus: I had understood that we could stipulate that an order could be entered upon that situation.

Mr. Jaureguy: Oh, yes. That is on the facts?

Mr. Marcus: Yes.

Mr. Jaureguy: I understood that.

The Court: Let me see your calendar, Mr. Clerk.

Mr. Jaureguy: And then we had the matter of the documents.

The Court: Ordinarily I don't bother with that. Ordinarily you meet with the Reporter to number the documents and agree on their authenticity. Next week is going to be real busy for us, a jury in. This week we are not going to be so busy, and so if either party wants to be heard further on pre-trial, or in the nature of pre-trial, just let us know any time any day this week.

Mr. Jaureguy: Maybe I am talking out of turn, but is your Honor going to expect all the documents that are going to be referred to at the trial must be produced at the pre-trial with numbers put on them?

The Court: Well, I think it would save your time as well as everybody's if you do that. You know how it is. For the mechanical purposes, in our pre-trial practice we don't fumble around with documents after trial.

Mr. Jaureguy: Yes, I understand.

The Court: With a hundred or a thousand documents you can take a lot of time if you haven't shown them to each other beforehand.

384 Mr. Jaureguy: I anticipate that there will be some documents that we won't know about or know the importance of them until the trial comes. We will produce

all that we have now, and I expect counsel will do the same. I don't want to do it unless they are going to do it, of course.

Mr. Marcus: We were the ones that offered to do that in the first place.

The Court: I expect you to produce to each other all the documents you know about beforehand. Those you don't know about can be dealt with in special cases at the trial.

(Whereupon the Court proceeded to the transaction of other business.)

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385 Reporters' Certif.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Civil No. 4255

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OREGON STATE MEDICAL SOCIETY, ET AL.,

Defendants.

We, Ira G. Holcomb, Official Reporter, and Glenn G. Foster, Pro-Tem Reporter, of the above-entitled Court, do hereby certify that on Monday, the 23rd day of May, A. D. 1949, we reported in shorthand certain pre-trial proceedings occurring in the above-entitled matter, that we thereafter caused our respective shorthand notes to be reduced to typewriting under our direction, and that the foregoing transcript, consisting of Pages numbered 70 to 103, both inclusive, constitutes a full, true and accurate transcript of said shorthand notes, our respective pages being as follows:

Ira G. Holcomb,.....Pages 70 to 99

Glenn G. Foster,.....Pages 100 to 103

so taken by us on said date, as aforesaid, and of the whole thereof.

Dated this 27th day of May, A. D. 1949.

(Signed) ELEINE E. FOSTER

386 IN UNITED STATES DISTRICT COURT

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Excerpts From Transcript of Pre-Trial Proceedings of May 25, 1949

Portland, Oregon
May 25, 1949
3:15 P. M.

APPEARANCES:

Mr. Phillip Marcus, Special Assistant to the Attorney-General.

Mr. G. G. Galassi, Attorney, Seattle Office, Anti-Trust Division.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze) and Mr. John J. Coughlin (Griffith, Peck, Phillips & Coughlin), Attorneys for Defendants.

PRE-TRIAL CONFERENCE (Continued)

Mr. Marcus: This is the first of what I expect will be several pre-trial conferences between attorneys for the parties before the Court Reporter at which documents contemplated to be introduced in evidence will be examined and the parties will attempt, to the extent possible, to agree as to authenticity and admissibility.

387 It is our understanding that no objection will be raised to the use of photostats.

Mr. Jaureguy: Let the record show that, unless otherwise stated, there will be no objection to the use of photostats. As far as presently advised, there will be no objection to any photostats and, particularly, will be no objection to any photostats that were taken from the files of any of the defendants.

Mr. Marcus: To continue with the Government's statement: It is proposed to mark the documents with numbers beginning with 1 and continuing in succession.

STIPULATION:

Mr. Marcus: It is hereby stipulated and agreed between the attorneys for the parties that the documents marked with pre-trial numbers may be retained by counsel present-

ing such documents, but subject to the right of opposing counsel to examine them at all reasonable times.

Mr. Jaureguy: That is satisfactory.

Mr. Marcus: This first document, marked Plaintiff's No. 1, is entitled "Constitution and Bylaws, American Medical Association."

Mr. Jaureguy: The defendants will admit that this document was the constitution and bylaws as of the date stated in the document. The defendants at the present time are not informed as to whether there have been any amendments but will not make no objection to it on the ground of
388 authenticity. We admit the authenticity but reserve the right to object on the ground it is incompetent, irrelevant and immaterial.

Mr. Marcus: I wonder if counsel can agree that the document marked No. 1 will be considered to be the constitution and bylaws of the American Medical Association in effect during the time covered by the complaint.

Mr. Jaureguy: Unless at the time the document is offered in evidence we have at that time evidence to the contrary, we will so stipulate.

(Document entitled "Constitution and Bylaws, American Medical Association" thereupon marked Plaintiff's Pre-Trial Exhibit No. 1.)

Mr. Marcus: The next document, marked Exhibit No. 2, is entitled "American Medical Association, Handbook, 1948."

Mr. Jaureguy: The defendants admit that the document handed us was published under authority of the American Medical Association, but we reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial, and heresay.

(Document entitled "American Medical Association Handbook, 1948" thereupon marked Plaintiff's Pre-Trial Exhibit No. 2.)

Mr. Marcus: The document marked Exhibit No. 3 is entitled "Voluntary-Prepayment Medical Care Plan,
389 1947, Revised; Council on Medical Service, American Medical Association."

Mr. Jaureguy: The defendants admit that Exhibit No. 3 was published by the authority of the Council on Medical Service, but reserve the right to object to its admissibility on the ground that the matters therein contained are incompetent, irrelevant and immaterial and heresay.

(Document entitled "Voluntary prepayment Medical Care Plan, 1947, Revised, Council on Medical Service, American

Medical Association" thereupon marked Plaintiff's Pre-Trial Exhibit No.3.)

Mr. Marcus: The next document, marked Exhibit No. 4, is entitled "Oregon State Medical Society, Constitution and Bylaws, Adopted September 9, 1939; Bylaws Amended as of October, 1946."

Mr. Jaureguy: Prior to the trial the defendants will endeavor to examine these documents, and particularly this document, in detail and, if they are able to do so, unless they find something in this document which they question, we will admit that it is an authentic copy of the constitution and bylaws as of the date set forth on the first page, but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial.

Mr. Marcus: Will Counsel let us know prior to the date of the trial?

Mr. Jaureguy: We will endeavor to, yes. If you
390 will tell me where you got it, maybe we can admit it now.

Mr. Galassi: Obtained it from Clyde Foley.

Mr. Jaureguy: On Counsel's assurance that it was obtained from Mr. Foley, we will withdraw our objection that it might not be an authentic copy, but will admit that it is an authentic copy of the constitution and bylaws, but reserve our objections to admissibility on the ground of being incompetent, irrelevant and immaterial.

Mr. Marcus: Will Counsel agree that, subject to their right to show otherwise, this is the constitution and bylaws of the Oregon State Medical Society for the period covered by the complaint?

Mr. Jaureguy: No, we cannot, because, on the face of it, it says it was amended October , 1946.

Mr. Marcus: I may say that we have subpoenaed the constitution and bylaws in existence during any of the period covered, so we are calling for any constitution and bylaws other than this one.

Mr. Jaureguy: It appears on the face of it that this incorporates amendments passed subsequent to the 1st of January, 1946. It says "Bylaws Amended as of October, 1946."

Mr. Coughlin: The constitution and bylaws were amended fully in 1939, so the constitution and bylaws, 1936 to 1939, may have been quite different from this copy.

Mr. Jaureguy: We won't stipulate any further.

391 Mr. Marcus: We have subpoenaed the constitution and bylaws.

(Document entitled "Oregon State Medical Society, Constitution and Bylaws, Adopted September 9, 1939, Bylaws Amended as of October, 1946" thereupon marked Plaintiff's Pre-Trial Exhibit No. 4.)

Mr. Marcus: The next document is numbered Exhibit No. 5 and is entitled "Articles of Incorporation of Oregon Physicians' Service."

Mr. Jaureguy: Maybe we would have no objection if you would tell us where you got this.

Mr. Marcus: Not at all.

Mr. Galassi: What is that letter on the back?

Mr. Jaureguy: Looks like an "N."

Mr. Marcus: "H."

Mr. Gallassi: Joseph Harvey, Jr., Assistant Manager, OPS.

Mr. Jaureguy: The defendants admit that this is a copy of the articles of incorporation and bylaws of the Oregon Physicians' Service, together with supplemental articles of incorporation, and now in force, and we make no objection to the admissibility.

(Document entitled "Articles of Incorporation of Oregon Physicians' Service," etc., thereupon marked Plaintiff's Pre-Trial Exhibit No. 5.)

Mr. Marcus: The next document is Exhibit No. 6, consisting of the constitution of the Lane County Medical Society, and its bylaws, which were obtained by the
392 plaintiff from Dr. E. L. Gardner, President, Lane County Medical Society, Eugene, Oregon.

Mr. Jaureguy: Subject to the right of defendants to show that there may be some amendments or later changes not shown in Exhibit 6, the defendants admit the authenticity of Exhibit 6 and make no objection to its admissibility.

(Document entitled "Constitution of Lane County Medical Society," etc., thereupon marked Plaintiff's Pre-trial Exhibit No. 6.)

Mr. Marcus: Pre-trial Exhibit No. 7 consists of the constitution and bylaws of the Jackson County Medical Society, furnished to the plaintiff by Dr. J. Lemery, Medical Center Building, Medford, Oregon.

Mr. Coughlin: It is Dr. C. W. Lemery.

Mr. Jaureguy: This says "J." Subject to the right of defendants to show errors or omissions or amendments,

defendants admit the authenticity and will make no objection to its admissibility.

(Document entitled "Constitution and Bylaws, Jackson County Medical Society," thereupon marked Plaintiff's Pre-trial Exhibit No. 7.)

Mr. Marcus: Pre-trial Exhibit 8 is entitled "Constitution and Bylaws of Coos and Curry County Medical Society."

Mr. Jaureguy: Will you tell me where you got this?

Mr. Marcus: From Dr. M. R. Kennedy at Coquille.

Mr. Jaureguy: Subject to the right to show that
393 there are omissions or additions or amendments, defendants will make no objection to the authenticity but will reserve the right to object on the ground it is incompetent, irrelevant and immaterial.

(Document entitled "Constitution and Bylaws of Coos and Curry County Medical Society" thereupon marked plaintiff's Pre-trial Exhibit No. 8.)

Mr. Marcus: May I ask Counsel why he is objecting to the admissibility of this?

Mr. Jaureguy: The others you have produced are constitutions and bylaws of defendants. The Coos and Curry County Society is not a defendant.

Mr. Marcus: The next document, to be marked as Pre-trial Exhibit No. 9, is entitled "Constitution and Bylaws of Multnomah County Medical Society."

If a more legible copy is obtained as a result of the subpoena issued to the Multnomah County Medical Society, it is agreeable that that copy will be substituted for the pre-trial exhibit now marked No. 9.

Mr. Jaureguy: Subject to the right to show that there are omissions or additions or amendments, the defendants admit that No. 9 is a copy of the constitution and bylaws and will not make any objection to its admissibility.

(Document entitled "Constitution and Bylaws of Mult-
nomah County Medical Society" thereupon marked
394 Plaintiff's Pre-trial Exhibit No. 9.)

Mr. Marcus: The document marked Exhibit No. 10 is a letter dated April 3, 1947, from Dr. Roy E. Hanford, Roseburg, Oregon, to the Roseburg Lumber Company.

Mr. Jaureguy: The defendants admit the authenticity of the document but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial and hearsay.

(Letter dated April 3, 1947, from Dr. Roy E. Hanford to Roseburg Lumber Company, thereupon marked Plaintiff's Pre-trial Exhibit No. 10.)

Mr. Marcus: Pre-trial Exhibit No. 11 consists of a letter from Dr. N. E. Ward of Seaside, Oregon, to Mr. Richard Norris, dated April 11, 1947, and a letter from R. Norris, undated.

Mr. Jaureguy: Defendants admit the authenticity of both documents but reserve the right to object to each of them on the ground that each of them is incompetent, irrelevant and immaterial and hearsay.

(Letter from Dr. N. E. Ward, Seaside, Oregon, to Richard Norris, dated April 11, 1947, and letter from R. Norris, undated, thereupon marked Plaintiff's Pre-trial Exhibit No. 11.)

Mr. Marcus: The next document is Pre-Trial Exhibit No. 12, consisting of a letter, unsigned, but on the
395 letterhead of Thomas R. Montgomery, Portland, Oregon, dated March 1, 1947, addressed to Ted Gilliland, Hood River, Oregon.

Mr. Jaureguy: Defendants admit the authenticity of the document but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial and hearsay.

(Letter dated March 1, 1947, on letterhead of Thomas R. Montgomery (unsigned) addressed to Ted Gilliland, Hood River, Oregon, thereupon marked Plaintiff's Pre-Trial Exhibit No. 12.)

Mr. Marcus: Pre-Trial Exhibit 13 consists of a letter from Dr. Russell V. Barnes, Medford, Oregon, addressed to Service Engineering Company, Portland, Oregon. The letter is dated October 2, 1946. There is a stamp on this letter stating "Received October 15, 1946, National Hospital Association."

Mr. Jaureguy: The defendants admit the authenticity of the document and of the stamp, but reserve the right to object to the admissibility of the document on the ground that it is incompetent, irrelevant and immaterial and hearsay.

(Letter dated October 2, 1946, Dr. Russell V. Barnes, Medford, Oregon, to Service Engineering Co., Portland, Oregon, thereupon marked Plaintiff's Pre-Trial Exhibit No. 13.)

Mr. Marcus: Pre-Trial Exhibit No. 14 is a letter on the letterhead of Charles E. Sears, John Montague and
396 Matthew C. Riddle and Frank S. Dietrich, signed by Jeannette Sexton, bookkeeper, dated May 11, 1946, addressed to Michael Colby, Portland, Oregon.

Mr. Jaureguy: Defendants admit the authenticity of the letter but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial and hearsay.

(Letter dated May 11, 1946, on the letterhead of Dr. Charles E. Sears, etc., signed by Jeannette Sexton, bookkeeper, addressed to Michael Colby, Portland, Oregon, thereupon marked Plaintiff's Pre-Trial Exhibit No. 14.)

Mr. Marcus: Pre-Trial Exhibit No. 15 is a letter from E. P. Hanke, Comptroller, Lower Columbia Co-Operative Dairy Association, Astoria, Oregon, addressed to National Hospital Association, dated September 19, 1946.

Mr. Jaureguy: Defendants admit the authenticity of the document but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial and hearsay.

(Letter dated September 19, 1946, Lower Columbia Co-Operative Dairy Association, Astoria, Oregon, to National Hospital Association, thereupon marked Plaintiff's Pre-Trial Exhibit No. 15.)

397 Mr. Marcus: Exhibit No. 16 is a letter from Dr. John R. Montague to Michael Colby, Portland, Oregon; the letter is dated April 3, 1946.

Mr. Jaureguy: The defendants admit the authenticity of the document but reserve the right to object to its admissibility on the ground it is incompetent, irrelevant and immaterial, and hearsay.

(Letter dated April 3, 1946, Dr. John R. Montague, to Michael Colby, Portland, Oregon, thereupon marked Plaintiff's Pre-Trial Exhibit No. 16.)

Mr. Jaureguy: I would like to make this statement, which applies to all documents, and that is whenever there is a typewritten document with underscoring or pen or pencil notations, by admitting the authenticity we do not admit that the underscoring or pen or pencil notations are made by the person who signed the document.

Mr. Marcus: Pre-Trial Exhibit No. 17 is a letter, February 5, 1946, unsigned, but on the letterhead of the Portland Clinic, Portland, Oregon, with the initials T. N. J.,

in the lower left-hand corner. The letter is addressed to Laura Hoffman, Vancouver, Washington.

Mr. Jaureguy: It will be admitted that the original of this document was typed by somebody connected with the Portland Clinic, but it is objected to on the ground that the document itself does not indicate that it was sent out by the authority of any doctor connected with the
398 Portland Clinic, and on the further ground that the document is incompetent, irrelevant and immaterial, and hearsay.

Mr. Marcus: Let the record show that on the letterhead, Pre-Trial Exhibit 17, appears the name of Dr. Thomas N. Joyce.

(Letter dated February 5, 1946, on letterhead of Portland Clinic, addressed to Laura Hoffman, Vancouver, Washington, thereupon marked Pre-Trial Exhibit No. 17.)

Mr. Marcus: I suggest that we resume the marking of exhibits tomorrow morning at 10:00 o'clock.

(Discussion off the record.)

(Due to the necessity of reporting other proceedings, the Court Reporter advised counsel it would be impossible for him to attend an adjourned session the following day.)

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408 IN UNITED STATES DISTRICT COURT

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Transcript of Proceedings of May 31, 1949

Portland, Oregon
Monday, May 31, 1949
1:30 o'clock P. M.

Before:

Honorable Claude McColloch, *Judge.*

Appearances:

Mr. Philip Marcus, Special Assistant to the Attorney-General.

Mr. G. G. Galassi, Attorney, Seattle Office, Anti-Trust Division.

Appearing on behalf of the Plaintiff.

Mr. John J. Coughlin (Griffith, Peck, Phillips & Coughlin), of Attorneys for Defendants.

409 Mr. Marcus: Your Honor, we have prepared letters to go out, in the first place, to those who have already been served with subpoenas and those to whom we expect to issue subpoenas, which subpoenas are to be tendered to your Honor today.

I have shown Mr. Coughlin stencils of these proposed letters. We are also presenting to your Honor the subpoenas duces tecum issued to a group of witnesses. I believe the Court has those subpoenas.

The Court: Is there some action you are asking me to take?

Mr. Marcus: No, your Honor; I thought with respect to the subpoenas and to those letters, I thought your Honor might care to look at them, and if you have any suggestions in addition to those contained in these letters we would very much appreciate them. I was merely attempting to cause as little inconvenience as possible to those to whom subpoenas have been issued.

The Court: I appreciate your thinking of me in that connection, but I would rather leave it in the hands of the lawyers altogether. Is there a new motion before me?

Mr. Marcus: Yes.

Mr. Galassi: Your Honor, there are two new motions. One pertains to a motion on behalf of the plaintiff for an order authorizing and directing the issuing of subpoenas duces tecum to twenty-three organizations, none of which are defendants. Most of them are either hospital associations, medical service bureaus, hospitals or clinics, and there is one medical society included which is
410 not a defendant. The other motion is likewise a motion for an order for subpoena duces tecum to twenty-two individuals, none of whom are defendants.

The Court: I do not suppose you are interested in the problem of witnesses other than your clients, are you? I mean, in the ordinary case, if subpoenas seem burdensome to witnesses other than the litigants, that is the witnesses' worry. They can come in here and make their own objections.

Mr. Coughlin: I think that is perfectly right. I do not know to whom these subpoenas are directed, but, on the other hand, if they are directed to a medical society which is not, you might say, nominally a defendant in the case or directed to members of the society who are defendants, it may be that we would have some interest in the matter.

The Court: Show these to Mr. Coughlin.

Mr. Coughlin: Your Honor, I believe some of these subpoenas are directed to members of the defendant societies. There is one subpoena also directed to an organization called the Central Willamette Medical Society which is affiliated with the Defendant Oregon State Medical Society, and these may all be counties which are affiliated with other defendant county societies. As to those defendants, it might be that we might make a representation to the Court after we have had a chance to examine them, but as to the people who have no connection with our societies, of course, we are not in a position to make
411 any representation.

The Court: You called one the Central Willamette—

Mr. Coughlin: The Central Willamette Medical Society, and I notice here there are several who are members of our society.

The Court: What society?

Mr. Coughlin: The Oregon State Medical Society, and all these mentioned here are members of the Multnomah County Medical Society except Charles P. Sweeney who is a member of the Jackson County Medical Society, which is a defendant in the case. I am not saying whether we will make any representation to the Court such as we made in the other broad subpoenas duces tecum matter, but we might want to make such a representation to the Court.

Mr. Marcus: With respect to the Central Willamette County Medical Society, the reason that Society is being brought in here, by way of a subpoena, is that in the course of looking through the documents we already have we found a good many references to Dr. Hunt in connection with that Society, Dr. Hunt is one of the individual defendants.

The Court: Hunt? H-u-n-t?

Mr. Marcus: Hunt; that is right.

The Court: Where does he live?

Mr. Marcus: I don't know.

Mr. Coughlin: Eugene.

412 The Court: In Eugene?

Mr. Coughlin: Yes.

Mr. Marcus: As to the other individual doctors mentioned in the subpoenas, I assume that practically any doctor we subpoena would be a member of the Oregon State Medical Society. These first three doctors we have

subpoenaed, in our opinion, are possible witnesses for us and not for the defendant, but we assume, of course, that for the most part they would be members of the Oregon State Medical Society.

Mr. Coughlin: First of all, a number of doctors have been subpoenaed, as I understand it, who are secretaries of the various county medical societies, or have been in the past. Secondly, a number of other individual doctors have been subpoenaed.

I just wonder whether, if the Government's position in regard to the secretaries is merely to provide authenticity of documents and minutes and so forth, whether it would be necessary to take a man, for instance, from Medford to authenticate the minutes of his society. It would take him out of practice for three days.

I also wonder whether, at some stage of the proceeding, something might be worked out with relation to some hundred doctors, so as to fit in with the Court's schedule and not take them out of practice too long. I am not particularly interested in that latter phase, but I am interested as to the secretaries of the societies, whether
413 it would be necessary for them to be here to authenticate minutes of their respective societies.

Mr. Marcus: I will say, your Honor, to the best of my knowledge we have not subpoenaed any doctor as a secretary of any of the societies. Mr. Jaureguy, so far, to the extent that we have gone over the documents, has been very good with respect to agreeing to the authenticity of minutes, and I do not think that we may expect to have any necessity of calling secretaries, as such, of the county medical societies for that purpose.

I am sure we will be able to arrange a schedule of the witnesses so that their convenience will be considered as well as that of the parties and the Court.

The Court: I think it would be a good idea for you and Mr. Jaureguy to look these new motions over and then if you have any suggestions that you think you should make be prepared to make them the day after tomorrow.

Mr. Coughlin: Your Honor, we would be very happy to do that.

The Court: Would that be satisfactory to you, Mr. Marcus?

Mr. Marcus: Yes, I believe so. In this connection, I wonder if I might bring up at this time another matter. At one of our hearings I think Mr. Foley stated the minutes of the House of Delegates had been sent to the

Northwest Medicine in which they were printed. Mr. Whittinghill of our Seattle office called me this morning and said that he had spoken to Mr. Smith, the
414 editor of that magazine, published in Seattle, and Mr. Smith stated the minutes were sent to him but that he only sends them back, so that leaves a hiatus as to the whereabouts of these minutes.

The Court: Foley also said he sent them over there for publication.

Mr. Marcus: That is right.

The Court: And that they could be found in one of the numbers of that magazine, on or about that time.

Mr. Marcus: I don't know at this time whether Northwest Medicine printed all these minutes or not, but that is something we can check up.

The Court: What he is saying to you now is that Foley is supposed to have got these particular minutes back.

Mr. Coughlin: I can make a representation to the Court right now that the minutes of the House of Delegates are published as received from Mr. Foley. I made a check of that in the last couple of days. In other words, the minutes of the House of Delegates were published in Northwest Medicine. I am satisfied of that, if that will satisfy the Government. If it does not, they can subpoena the minutes, but I doubt if you will find them because they are sent up there to be printed and some of them may not have been sent back. All of them were printed as sent up there and, as a matter of fact, Dr. Smith called me to find out what the problem was. He said there
415 was a Government man over there to get the minutes, and he made available to the Government man, whoever it was, all of the files, the printed files of Northwest Medicine in which these minutes were published, so I don't think there should be any problem about that.

Mr. Marcus: I do not think there will be any problem on the basis of Mr. Coughlin's statement. I assume, of course, there will be no question of authenticity when copies of Northwest Medicine containing those minutes are offered in evidence.

Mr. Coughlin: No, we will raise no question of authenticity, your Honor.

The Court: Then I may or may not be hearing from you the day after tomorrow. If I do hear from you, you let Mr. Marcus and Mr. Galassi know in advance. If I do not hear from you, I will issue the subpoenas day after tomorrow as requested and as moved.

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, Official Reporter of the above-entitled Court, do hereby certify that on the 31st day of May, A. D. 1949, I reported in shorthand certain proceedings occurring in the above-entitled matter, that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of Pages numbered 1 to 8, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me on said date as aforesaid, and of the whole thereof.

Dated this 23rd day of June, A. D. 1949.

(Signed) IRA G. HOLCOMB
IRA G. HOLCOMB
Court Reporter

415-A (Judge McColloch)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON
[TITLE OMITTED]

Excerpts From Transcript of Proceedings of September 7, 8, 9, and 12, 1949—Depositions of Witnesses in Re Production of Documents, and Hearings in Relation Thereto

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426 L. A. BROWN was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Would you kindly tell the Reporter your full name and residence. A. L. A. Brown, Klamath Falls.

Q. Mr. Brown, are you connected with the Klamath Medical Bureau? A. I am.

Q. What connection? A. Manager.

Q. Was the Klamath Medical Service Bureau served with a subpoena duces tecum in this case? A. The secretary was; yes, sir.

Q. Do you have a copy of that subpoena with you? A. I have.

Q. Have you produced the documents called for in that subpoena? A. To the best of my knowledge and belief I believe we have; yes, sir.

Q. And are the documents in that little brown bag? A. They are, sir.

Q. Are those documents taken from the files of the Klamath Medical Service Bureau? A. They are.

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433 C. F. WRIGHT was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Will you kindly give the Reporter your name. A. C. F. Wright, Pacific Hospital Association, Eugene.

Q. Your residence? A. Eugene, Oregon.

Q. Are you connected with the Pacific Hospital Association, Mr. Wright? A Yes.

Q. In what capacity? A. Manager.

Q. Was the Pacific Hospital Association served with a subpoena duces tecum in this case? A. Yes.

Q. Have you brought with you the documents called for in that subpoena? A. Yes. These are the documents. They have been out of my office once when they were taken and sent back.

Q. Are those documents taken from the files of the Pacific Hospital Association regularly kept there in the regular course of business? A. That is right.

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436 THOMAS J. KINGSLEY was thereupon produced as a witness in behalf of the Government and, having been first duly sworn, by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Would you kindly give the Reporter your full name and residence. A. Thomas J. Kingsley, 1035 Lockwood, Coos Bay, Oregon.

Q. Mr. Kingsley, are you connected with the Coos Bay Hospital Association? A. Yes, sir.

Q. In what connection? A. I am the manager.

Q. Mr. Kingsley, was the Coos Bay Hospital Association served with a subpoena duces tecum in this case? A. Yes, sir.

Q. Have you brought with you the documents called for in that subpoena? A. I have.

Q. Are those documents taken from the files of the Coos Bay Hospital Association? A. They are.

Q. And regularly kept there in the regular course of the Association's business? A. Yes.

Q. Mr. Kingsley, do you have any objection to leaving those docu-

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440 HOWARD VANLEHN was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Would you kindly give the Reporter your full name and residence. A. Howard VanLehn; Eugene, Oregon.

Q. Mr. VanLehn, are you connected with the Eugene Hospital & Clinic? A. I am, sir.

Q. In what capacity? A. Office Manager.

Q. Was the Eugene Hospital & Clinic served with a subpoena duces tecum in this case? A. They were.

Q. Have you brought with you the documents called for in that subpoena? A. Yes, sir.

Q. Are those documents taken from the files of the Eugene Hospital & Clinic and kept in the regular course of its business? A. They are.

Mr. Marcus: Mr. VanLehn, I will ask you, please, to turn those documents over to the Reporter to be marked as coming from the Eugene Hospital & Clinic pursuant to the subpoena served upon the Hospital & Clinic.

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444 WILLIAM P. WILBUR was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Will you kindly give the Reporter your full name and residence. A. William P. Wilbur, Lakeview, Oregon.

Q. Mr. Wilbur, are you connected with the Lakeview Hospital? A. Yes.

Q. In what connection? A. Director.

Q. Was the Lakeview Hospital served with a subpoena duces tecum in this case? A. Yes.

Q. Have you brought with you the documents called for in that subpoena? A. Yes.

Q. Are those documents taken from the files of the Lakeview Hospital and kept there in the regular course of the hospital's business? A. Yes.

Mr. Marcus: Mr. Wilbur, would you kindly hand those documents to the Reporter so that they may be marked as coming from the Lakeview Hospital, Inc., pursuant to subpoena.

(The documents produced by the witness were
445 marked by the Notary as Plaintiff's Wilbur Deposition (Lakeview Hospital) Exhibit 1 for identification.)

By Mr. Marcus:

Q. Mr. Wilbur, do you have any objection to leaving these documents here subject to the same understanding that we have had with respect to the preceding witnesses? A. No.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. Now, the Lakeview Hospital, is that a private hospital or is that a hospital owned by a group of doctors, or what is the background there? A. It is a corporation owned by all the practicing physicians in the town.

Q. And in connection with that corporation do they have a system of prepaid medical care? A. Yes.

Q. And do all the physicians in Lakeview belong to that organization? A. Yes.

Q. Did the Government attorneys or agents go through the records prior to the time you were subpoenaed? A.

One of the Government agents went through these after the subpoena had been served.

Q. Are these documents that he picked out and told you to produce? A. I didn't get the last.

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462 FRANK F. DICKSON was thereupon produced as a witness in behalf of the Government, and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Kindly give the Reporter your full name and residence. A. Frank F. Dickson, 344 Northeast MacLeay Boulevard.

Q. Mr. Dickson, are you connected with the Northwest Hospital Service Plan? A. I am.

Q. What is your connection? A. Executive Director.

Q. Was the Northwest Hospital Service Plan served with a subpoena duces tecum in this case? A. It was.

Q. Have you brought with you the documents called for in that subpoena? A. All the pertinent ones.

Q. And they are documents taken from the files of the Northwest Hospital Service Plan and kept there in the regular course of business? A. That is right.

Q. Mr. Dickson, would you have any objection to leaving those documents here on the same understanding we have had with the other witnesses?

468 • • • • • •

Cross Examination of C. C. Bechtold

By Mr. Jaureguy:

Q. You gave a deposition at the request of the defendants here some time ago? A. I did.

Q. You haven't any reason to modify anything you said in that deposition, have you? A. I don't recall any reason now.

469 2:30 o'clock P.M.

A. L. O. SCHUELER was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Please state your full name and residence. A. A. L. O. Schueler, Bend, Oregon.

Q. Are you connected with the Lumbermen's Hospital? A. Yes.

Q. In what connection? A. I am Secretary-Treasurer.

Q. Was the Lumbermen's Hospital served with a subpoena duces tecum in this case? A. It was.

Q. Have you brought with you the documents called for in that subpoena? A. I have.

Q. Are those documents taken from the files of the Lumbermen's Hospital? A. They are.

Q. And are they kept in the regular course of the hospital's business?

479 Mr. Marcus: . . . I think Mr. Jaureguy will admit that we have cooperated with the defendants in every respect in order to get the documents marked that we think we will put into evidence. When we have done that, as soon as we have done that, we have turned the documents over for their examination.

The Court: That is your purpose under your motion. He has another purpose.

Mr. Marcus: Yes, your Honor, but Mr. Jaureguy is attempting at this time to turn this matter into a trial of the issues. It was my understanding that this case was set for trial beginning October 18th.

Mr. Jaureguy: I am not in any position at this time to argue.

The Court: Come up here and take the stand. He wants to cover a few of these matters while you are here. Sit down, Mr. Marcus. Go ahead and make him your own witness for the purpose of discovery.

A. L. O. Schueler was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. The Lumbermen's Hospital Association is a
480 corporation? A. That is correct.

Q. Who are the stockholders? A. Shevlin-Hixon Company and Brooks-Scanlon Lumber Company.

Q. Who operates the hospital? A. The hospital association operates the hospital.

Q. That is, the corporation owned by the two lumber companies operates the hospital? A. That is correct.

Q. Does it have any system of prepaid medical care which it sells to its members?

Mr. Marcus: I object, your Honor, to that question on the ground that it is not relevant to discovery, if that is what the defendants are asking for. Under our subpoena we asked for the production of documents.

The Court: I don't care anything about your subpoena. I told him he might make him his own witness for the purpose of discovery in connection with this case.

Mr. Jaureguy: I am only questioning him on things that I think are relevant in connection with the admissibility of the documents that he has produced.

The Court: Examine him like we do in any other hearing. Make him your own witness for the purpose of discovery generally.

Mr. Jaureguy: I do not mean to be complaining, your Honor.

The Court: Go ahead.

By Mr. Jaureguy:

Q. Does the Lumbermen's Hospital Association
481 have any outside sale of prepaid medical care for so much a month or something of that kind? A. Only to the employees of Shevlin-Hixon Company and Brooks-Scanlon Lumber Company.

Q. It sells it to them? A. The hospital has a contract, two contracts, with each company, one covering on-the-job injuries and the other covering off-the-job sickness and injuries.

Q. Does that include the employees of the two companies? A. It includes the employees of the two companies, except those who do not wish to carry that type of coverage.

Q. It is optional with them? A. That is correct.

Q. Does it cover families of employees? A. No, sir.

Q. Does the hospital admit as patients any persons not covered by this prepaid medical care contract?

Mr. Marcus: Your Honor, we object again on the ground that the question is not relevant to the matter of discovery.

The Court: Objection overruled.

(Question read.)

A. Not as a general rule, only in emergencies when other hospitals cannot take care of emergency cases.

By Mr. Jaureguy:

Q. Primarily, the hospital is for those employees of those two lumber companies who have entered into this
482 prepaid medical and hospital care contract? A. That is one contract, yes. The other is a contract with the company to take care of industrial accidents.

Q. The two companies are, then, not under Workmen's Compensation? A. That is correct.

Q. They are not under that? A. That is right.

Q. The doctors who take care of these patients, how are they chosen? A. They move to Bend and, after they are there a little while, the board of directors say that they can practice in the hospital. We have never turned down anyone if they are licensed to practice.

Mr. Marcus: Your Honor, I object to that last question, on the same grounds. As you well can see, we are getting into a hearing of the case and, as your Honor well can see, we are getting into a hearing of the case well before the 18th of October and well before either side is prepared to argue with respect to documents and other matters or as to the competency or relevancy of particular questions.

Now, your Honor, may I say this? If we are going to be put in the position by use of the subpoenas of producing witnesses for the defendants, we would seriously consider whether or not to continue the use of subpoenas for
483 that purpose, because it was our understanding that these subpoenas duces tecum were issued for the purpose of getting in documents so that we would have pre-trial proceedings that would amount to something so at the time of the trial we would have such documents marked, so by that time most of the documents would have been examined not only by the plaintiff but by the defendants. It was not our understanding that we would have trial proceedings, which I consider these are, prior to the date the trial has been set for.

The Court: The objection is overruled.

By Mr. Jaureguy:

Q. So you have never turned down any particular doctor who wanted to have patients in that hospital, assuming the patients were employees of the two lumber companies? A. Yes, if the patients ask for doctors, they get them.

Q. You said a certain group of doctors did not practice in the hospital? A. That is correct.

Q. At one time they did? A. That is correct.

Q. Was their withdrawal from the hospital voluntary or was it compelled? A. Voluntary.

Q. What was the reason they gave for withdrawing? A. Didn't like the way it was run.

Q. Was there an objection on the fees? A. No.

484 Q. I notice some correspondence here between the Lumbermen's Hospital Association—By the way, is that "Lumbermen's Hospital Association" or "Lumbermen's Hospital, Inc.," or do you know? A. (No response.)

Q. That is all right. The Robert Hemingway Memorial Clinic, what is that? A. It is a group of doctors at Bend, five or six of them.

Q. Do they practice under that name? A. They practice in one building under that name, yes.

Q. Do they have one office, or do they have several offices, or do you know? A. They have one building. I think one of them, however, is outside of the building.

Q. Drs. Hemingway, Pease and Rademacher; just the three? A. No, I think there are more there now. I think there are five or six.

Q. Here is another list here at a later date. A. I may say the letter under which they retired from the hospital or quit the hospital is in that file.

Q. Are these the same doctors who withdrew from the hospital, the doctors composing this clinic? A. Yes. The letter is in that file.

Mr. Marcus: May the record show a continuing
485 objection to this line of questioning?

The Court: It is so understood.

By Mr. Jaureguy:

Q. I notice here the first document, numbered 1 and 2, a letter from the Oregon Physicians' Service to the Brooks-Scanlon Lumber Company. You are an official of Brooks-Scanlon? A. No, I am not.

Q. You are with Shevlin-Hixon? A. I am with Shelvin-Hixon.

Q. Do you know anything about the circumstances surrounding this letter from Oregon Physicians' Service to Brooks-Scanlon Lumber Company? A. Only that it was addressed to that company.

Mr. Marcus: I wish to object, again, your Honor. Now

we are dealing with a specific document which I have not even seen.

The Court: Show him the document you have.

Mr. Marcus: Your Honor, I am not prepared at this time to look at this document and ask questions about it.

The Court: You can have all the time you want to look at it later if you want to. Go ahead with your questions.

By Mr. Jaureguy:

Q. Do you know the circumstances concerning the writing of the letter which OPS sent to one or the other of these lumber companies, outlining their service? A. I have an impression as to how it came about, yes. Not being in on the letter, I don't know, but I have an impression.

486 Q. You say "not being in on the letter." A. I say, not having anything to do with the letter.

Q. I see. A. It was addressed to Mr. Glassow who was then, I think, President of the Hospital Association.

Q. I take it from your testimony that these two lumber companies do not avail themselves of the services of OPS? A. That is correct.

Q. Was that due to any fault of OPS, or is it a reputable organization?

Mr. Marcus: Objection on the ground that it is not relevant.

The Court: Answer.

A. We have our own organization. We are not interested in OPS at this time.

By Mr. Jaureguy:

Q. Yes, but OPS has not done anything to antagonize or arouse the enmity of your organization? A. Not as far as I am concerned.

Q. The relationship of your hospital with doctors who are affiliated with OPS, has that been friendly? A. I don't know who belongs to OPS.

Q. The relationship of your hospital with the doctors in Bend, has it been friendly or otherwise? A. Friendly, always.

Q. Does that statement include the doctors who withdrew from the Lumbermen's Hospital? A. As far as we

487 are concerned, they withdrew; that is all. If they don't want to practice there, it is perfectly all right with us.

Q. There was nothing about that that made you feel there was anything improper on their part? A. That is their privilege.

Q. Has anybody ever tried to exercise any coercion over your association, tried to compel you to take a contract with OPS?

Mr. Marcus: Objection, again, your Honor, because that question is not proper at this time. It asks, first, for a conclusion of this witness, and it is not relevant to the instant proceeding.

The Court: Overruled.

A. No.

By Mr. Jaureguy:

Q. What is the method of compensation of the doctors who perform this service? How is that compensation arrived at? A. Well, the Board of Directions makes up a schedule, and, if it is satisfactory to the doctors, why, that is what we pay.

Q. A regular fee schedule? A. Yes.

Q. And you pay the doctors on the basis for that fee schedule? A. That is right.

Q. I have not looked through this file of documents, but is the fee schedule someplace in here? A. I couldn't
488 tell you. There is a letter in there in connection with fees paid, but I think it was their proposition—not fees paid, but in connection with fees, and I think it was their proposition. I have it in mind that that was not agreed to, that particular fee schedule.

Q. Are there any other hospital facilities in Bend besides your hospital? A. Yes, there is one other hospital.

Q. What is the name of that hospital? A. St. Charles, I believe.

Q. Is that a general hospital? A. That is a general hospital.

Q. Your hospital is a private hospital? A. I presume that is what you would call it.

Q. Private, in the sense that it is not open to the general public? A. That is correct.

Q. And the doctors who practice in there do so because you permit them to do so? A. Well, that question has never arisen. They practice in Redmond.

Q. Are your Articles of Incorporation in here, do you know? A. They are not, no.

Q. Is there a hospital at Redmond, too? A. I think Dr.

Jones has a hospital there, and I believe that they
489 are now building a new one.

Q. Dr. Raymond Jones? A. That is it, I believe.

Mr. Jaureguy: That is all. Thank you.

The Court: Do you want to cross-examine now or later, Mr. Marcus?

Mr. Marcus: I wish to reserve the right of cross examination. I do not wish to cross-examine now, no.

The Court: Step down, sir.

(Witness excused.)

Mr. Jaureguy: The same question arises with respect to another of the witnesses, but that is not so important because he is a local man.

The Court: Do you wish to put him on?

Mr. Marcus: May I say this, as to Mr. Brunkow? As Mr. Jaureguy has said, he is a local man. We do intend to call him as a witness, but to call him now it does seem to me it would be merely going over much of the same matters and matters that will be covered at the trial.

The Court: I understand what you state. Do you want to call him now as your witness, Mr. Jaureguy?

Mr. Jaureguy: I think we will not call Mr. Brunkow. We will otherwise get the information from him.

* * * * *

513 Mr. Jaureguy: Yes, we have that. We have that Kardex file. As to the rest of that paragraph, we have some but not all of the monthly lists furnished to the American Medical Association.

The Court: What is a Kardex file, a card for each member?

Mr. Foley: Right.

The Court: How many doctors are there in Oregon? About 1200?

Mr. Foley: 1500. We have about 1200 members.

The Court: Does the answer you made about 2 cover 6 also?

Mr. Jaureguy: Yes, and our answer is the same. They have been furnished the documents.

The Court: That covers 6, too?

Mr. Jaureguy: Yes, your Honor, every one they have asked for on this subject, I think.

The Court: I think you made a broader statement than that, anyone you knew about?

Mr. Jaureguy: I can say that, yes. I am speaking about myself personally. I think your Honor probably understands I did not go down and search through these files myself. I asked Mr. Foley to get them for me, but sometimes I did run across documents.

I have, for instance, a little file about an inch thick of the Clatsop County Medical Society which I think is one of two of the medical societies outside of the Multnomah that kept any kind of a file. I have run across some of that

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Mr. Jaureguy: Before he answers that, your Honor, I would like to say, so that silence might not
516 be taken as acquiescence, that there is no relationship between the OSMS and the Northwest Hospital Service plan.

Mr. Foley: There is no relationship between them. Northwest Hospital Service plan is an organization of hospitals.

The Court: Not the Blue Cross?

Mr. Foley: Yes, it is the Blue Cross. The organization of hospitals is the Blue Cross. The organization of doctors is the Blue Seal.

The Court: I thought I belonged to the Blue Cross, as I told you earlier.

Mr. Foley: No. Your contract is with an organization of hospitals.

The Court: You do not have any official connection with it?

Mr. Foley: No. There are doctors who are on the board.

The Court: Your medical plan is competitive, then?

Mr. Foley: Yes, it is. I may say this, and this may be what they are driving at: Over a period of some time there were negotiations on between the hospitals and doctors to eliminate that competition, and the plan that they tried to work out was that one headquarters would sell prepaid medical care and one headquarters would sell prepaid hospital care, what they call a "single package"; there would be one agency selling the Blue Cross service for hospital care and the medical service.

But, as Counsel must know, because they have read the correspondence on the subject, those negotiations
517 finally fell through, I think very unfortunately. The only relationship, if it can be called a relationship, is that there are doctors who belong to the Oregon State Medical Society who are on the Board of Trustees of the Northwest Hospital Service plan.

The Court: Jumping to 12, what is the relationship between Northwest Medicine and OSMS?

Mr. Jaureguy: OSMS, similar to other state medical societies, elects certain members of the Board of Trustees of Northwest Medicine. Northwest Medicine is an organization which is, I guess you would call it, owned and sponsored by various medical societies in the Northwest. OSMS also has the privilege, which it has exercised, of having an editor or assistant editor send articles in to Northwest Medicine which are published, such as the proceedings in Oregon, "Letters to the Editors" and things of that kind.

The Court: That is published in Tacoma, is it?

Mr. Jaureguy: In Seattle, I think.

The Court: Is it a commercial enterprise?

Mr. Jaureguy: I think it is non-profit. They have a layman, I think, or a retired doctor, one or the other, who gets a salary.

The Court: I have read where National Medicine was a very profitable magazine.

Mr. Jaureguy: I don't think that is true of Northwest Medicine. I don't know, your Honor. I may be wrong.

518 The Court: Do you own stock in it, you people in Oregon?

Mr. Foley: No. It is a non-profit organization.

Mr. Coughlin: It is a separate organization.

Mr. Jaureguy: A non-profit organization. Whether somebody connected with it, getting advertising and the like, makes anything out of it so it can be called profitable, I don't know; but as far as the Society is concerned, it is a non-profit organization.

The Court: It might be said it was devoted to publicity or propaganda.

Mr. Jaureguy: I think not for propaganda, your Honor, because the circulation is largely confined to doctors. I think it is more in the nature of a combination house organ, a good deal like our monthly bulletin to the Oregon State Bar, except that the members of three or four Northwest States get a combined bulletin, and a number of the subjects would have to do with things of general interest.

The Court: If it is like our legal magazines usually are, they had better spend their money somewhere else.

Mr. Jaureguy: I have much more pleasure reading their bulletins than ours. I read theirs quite a lot.

If I may add, your Honor, we have furnished them with the names of all doctors of the Oregon State Medical

Society who have been on the Board of Trustees and who have been editors and assistant editors and, in addition to that, they confine them on the list which is
519 published.

The Court: They don't want to look these things up. They want you to do it.

Mr. Jaureguy: No, your Honor, that is not quite true. They have made a very careful search of all of these documents. I know that from the nature of the questions that they have asked us.

The Court: Then they have saved you some work.

Mr. Jaureguy: That is correct, because the items which they have called particular attention to I have studied much more carefully than the rest of them.

The Court: How are these publications of OSMS referred to in 14?

Mr. Jaureguy: For a period of time OSMS and the Multnomah County Medical Society got out one of these little things that reminds me of the Fawcett publications, about the size to put in your pocket.

The Court: Did you read the Fawcett publications?

Mr. Jaureguy: In my younger days I read them, and I have been reminded of that fact since then. At any rate, it was a little publication of that kind which was published for a few years, by, I think, between the Multnomah County Society and the State Society. I think it went about three or four years.

The Court: Are there circular letters that OSMS sent out from time to time?

533 PORTLAND, OREGON, WEDNESDAY, SEPTEMBER 7, 1949, at the hour of 10:15 o'clock A. M., the taking of depositions herein was resumed in the courtroom of Honorable James Alger Fee, as follows:

RALPH W. NELSON was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Will you kindly give the Reporter your full name and residence. A. Ralph W. Nelson, 932 Southeast 60th Avenue, Portland.

Q. Mr. Nelson, are you connected with the Portland Sanitarium & Hospital? A. I am, yes.

Q. What is your connection? A. I am Secretary of the Board of Trustees and Administrator of the hospital.

Q. Was the Portland Sanitarium & Hospital served with a subpoena duces tecum in this case? A. Yes.

Q. Have you brought with you the documents called for in that subpoena? A. Yes, I have.

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SISTER MIRIAM TERESA was thereupon produced as a witness in behalf of the Government and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

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554 Q. Would you have any objection to turning over those documents on the same understanding as had with respect to the preceding witnesses? A. No, I would have no objection.

Mr. Marcus: Would you then kindly turn them over to the Reporter so that they may be marked as coming from the St. Vincent's Hospital pursuant to subpoena.

(The documents produced by the witness were thereupon marked by the Notary as Plaintiff's Sister Miriam Teresa Deposition (St. Vincent's Hospital) Exhibit 1.)

Cross Examination

By Mr. Jaureguy:

Q. I see one of the documents that is here is a copy of a mimeographed letter regarding the raising of funds for a suitable memorial for the late Dr. Sabin. A. Yes.

Q. Would you tell us how the plans for that memorial are progressing? A. Well, it is planned to dedicate one of the surgeries to the memory of Dr. Sabin. Funds are being solicited for that purpose.

Q. Have the doctors been solicited? A. Yes, just the doctors.

Q. Just the doctors. Are the doctors friendly to
555 that proposal? A. Yes, they are; very much.

Mr. Jaureguy: That will be all. Thank you very much.

The Notary: Are you willing to waive the reading and signing of your deposition?

The Witness: Yes.

(Witness excused.)

(Reading and signature waived.)

(Thereupon an adjournment was taken until Thursday, September 8, 1949, at the hour of 10:00 o'clock A. M.)

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556 PORTLAND, OREGON, THURSDAY, SEPTEMBER 8, 1949, at 10:00 o'clock A.M., the taking of depositions herein was resumed as follows:

CHARLES THOMAS SWEENEY was thereupon produced as a witness in behalf of the Government and having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Dr. Sweeney, will you please give the Reporter your full name and residence. A. Charles Thomas Sweeney, Portland in the summer and Carmel, California, in the winter. And that is an invariable rule. I just have two homes.

Q. Were you served with a subpoena duces tecum in this case? A. I was—I would like to know what that means first.

Q. It is a Latin phrase, which means "You come here and bring with you." A. Well, I suppose so, but that wasn't in medical Latin.

Mr. Jaureguy: "Duces" means "bring"; "te" means "you" and "cum" means "with."

The Witness: All right. Thank you.

Mr. Marcus:

Q. Do you have with you the documents call for by the subpoena? A. I have copies that I can certify to or swear to, or anything else.

557 Mr. Marcus:

Q. I wonder if I might look at those documents. A. (Handing document to Counsel): I have another one to submit at the right time. May I say a word about that personal letter?

Q. Let me, if I may, ask you first, Doctor, with respect to this letter, which has the heading "Secretary, Jackson County Medical Society," and then " Dear Doctor." To the best of your knowledge is this a copy of a letter which was filed with the Jackson County Medical Society? A. Well, now, you know that has been eight or ten years ago. As I remember, the old one and this copy are identical. (Handing a document to Counsel): That to a certain extent is a personal letter, but you asked for it. I wrote it in the heat of passion, probably, because I was utterly astounded at the asinine contents of the other thing, and I probably wrote as I should not have done. But it is no matter. I wrote it.

Mr. Marcus:

Q. We are not asking any questions at this time. We are merely asking with respect to these documents. This letter of February 15, 1940, addressed to C. C. Bechtold, is this to the best of your knowledge a true copy of the letter which was sent to Mr. Bechtold? A. I think it is word for word. I am quite sure of it.

Mr. Marcus: Would you mark these, please.

(Copy of letter dated February 13, 1940, addressed to "Secretary, Jackson County Medical Society," was
558 thereupon marked by the Notary as Plaintiff's Sweeney Deposition Exhibit 1; Copy of letter dated February 15, 1940, Charles T. Sweeney to C. C. Bechtold, was thereupon marked by the Notary as Plaintiff's Sweeney Deposition Exhibit 2.)

Mr. Marcus: Let the record show that the first document referred to has been marked Plaintiff's Exhibit 1 for Identification and the second document referred to has been marked Exhibit 2 for Identification.

Q. Dr. Sweeney, would you have any objection to allowing counsel for both sides to examine those documents and then return them to you? A. To me?

Q. Yes. A. No, I have no objection.
Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. Doctor, you have practiced medicine for many, many years down in Medford? A. Quite a while. About thirty-five years.

Q. As I recall, you were President of the Oregon State Medical Society? A. I was in 1938.

559 Q. '38 and '39? A. No, it was '37 and '38.

Q. Oh, '37 and '38. You have been a member, I suppose, of the Medical Society back from time immemorial? A. I don't remember when I wasn't.

Q. This letter here that was addressed to the Secretary of the Clatsop County Medical Society, making certain charges against you, the Society never did pass on that, did they?

Mr. Marcus: Objection; objection. Let me say if Counsel persists in having the witness answer such questions, we will have to have the Court rule.

Mr. Jaureguy: You may get your Court. I am going to proceed.

Mr. Marcus: Then we will have to adjourn until we can get Judge McColloch.

Mr. Jaureguy: All I want is an assurance that you are not going to delay this thing so long that the doctor won't be here.

Mr. Marcus: I am willing to go across the way right now.

(Thereupon proceedings herein were continued before Honorable Claude McColloch, and the following occurred:)

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560 Sept. 8, 1949
10:30 A.M.

BEFORE:

Honorable Claude McColloch, *Judge.*

PRESENT:

Mr. Marcus, Mr. Cohen, Mr. Galassi, and Mr. Weinstein.

Mr. Jaureguy and Mr. Coughlin.

Mr. Jaureguy: In the deposition, your Honor, that is being taken in the other courtroom of Dr. Charles Thomas Sweeney, formerly of Medford, who has been a physician for something like fifty-eight years, according to the information, is on the stand, and two letters have been identified on behalf of the Government, one of which has to do

with some charges filed against him down in Jackson County.

I asked him whether or not those charges were ever brought, or whether they were tried or dismissed, and an objection was made that that was not a proper question to ask the witness, and Mr. Marcus would not permit me to have the answer taken. Therefore, we want a ruling by your Honor.

I wish to say that I have other questions that I wish to ask the doctor. He already volunteered the statement, when Mr. Marcus was questioning him, that at one time he lived in California—I don't know whether that means before October 18th or not. I hesitate to have a subpoena served on a doctor like this who has to come up from California, just to ask him a few questions. Furthermore, I think they are perfectly proper in this type of proceeding.

561 Mr. Marcus: Well, your Honor—

The Court: Let me see the letter. Who wrote this first letter addressed to the Secretary of the Jackson County Medical Society?

Mr. Jaureguy: It is my understanding, your Honor,—I have seen what I think is the original of that. It is my understanding that the names of the two doctors of Medford—I am sorry that I cannot recall the name of one of them, but the other is Dr. Durno. I think there were two names signed to that. I don't remember the other name.

The Court: What was this anticipated trouble you were asking him about?

Mr. Jaureguy: The question I asked him was, in substance, whether or not these charges were ever brought to trial in Jackson County or whether they were dismissed or what happened.

The Court: You mean what is in this letter?

Mr. Jaureguy: Yes, your Honor, what is in that letter, signed by Dr. Durno.

The Court: I thought you were talking about charges from another source.

Mr. Jaureguy: No.

The Court: All right.

Mr. Marcus: May I be heard, your Honor?

The Court: Yes.

562 Mr. Marcus: With respect to this subpoena duces tecum, your Honor, unless these documents are offered in evidence and unless Dr. Sweeney is called as a witness, there is no relevance at all to this sort of questioning. We have subpoenas out under duces tecum to thirteen

or fourteen other persons besides Dr. Sweeney.

In view of the type of questions Mr. Jaureguy has been asking, we assume he is trying to have a trial of this proceeding with respect to these persons who are merely asked to bring in documents at this time.

As your Honor knows, the defendants objected in each instance to the issuance of these subpoenas duces tecum. We urged their issuance upon your Honor in order to get the documents into court so that they could be marked for pretrial purposes ahead of the time of the trial, in the event that we thought those documents were relevant.

In view of what has taken place, we would like at this time to withdraw our request for these subpoenas duces tecum issued to third parties, and we would ask the Court at this time to quash those subpoenas.

The Court: It looks to me like you ought to have that in writing.

Mr. Marcus: Put it in writing?

The Court: Yes.

Mr. Marcus: Will your Honor give us a little time
563 to do that?

The Court: Why, certainly.

Mr. Marcus: What will be the disposition of the persons who are in the other courtroom?

The Court: Well, you can put Dr. Sweeney on the witness stand while he is up here, and then you can take up the other cases later.

Mr. Marcus: Your Honor, I would make the same motion with respect to Dr. Sweeney's subpoena duces tecum.

The Court: Dr. Sweeney is here in the building. Do you want to make him your own witness for purposes of discovery, Mr. Jaureguy?

Mr. Jaureguy: Yes, your Honor.

The Court: You may do that.

Mr. Jaureguy: I think at this point the record should show that Dr. Sweeney has already been examined by the Government. I do not see how they can quash the subpoena duces tecum after they have put him on the witness stand and he has been sworn.

The Court: Bailiff, have Dr. Sweeney come in.

Mr. Marcus: Let the record show that the Government has a continuing objection to this line of questioning, on the ground that it is not proper at this time and is not relevant to the instant proceeding.

564 The Court: Yes.

DR. CHARLES THOMAS SWEENEY was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?
The Witness: Charles Thomas Sweeney.

(Witness sworn.)

The Court: Doctor, how are you? I haven't seen you for some time.

The Witness: I haven't seen you for some time. I want you to know that day after tomorrow I will be eighty.

Direct Examination

By Mr. Jaureguy:

Q. You say you will be eighty? A. Didn't you hear it? Eighty. I was born in '69.

Q. In reference to this letter of February 15, 1940, addressed to Mr. Bechtold, at that time you had been practicing medicine forty-nine years? A. I kept up practicing medicine for six years more, seven years more after that.

Q. It runs in my mind that on the occasion of your fiftieth anniversary in the practice they had some celebration for you down in Medford? A. Well, to give you an idea of it, over 700 friends and patients called on me in that one day.

Q. I read about it in the Medford paper. A. 565 Yes.

Q. I want to ask you a few questions here about this matter. I think you have already stated you were a member of the State Medical Society back as long as you remember. A. Well, I transferred from Montana here about forty years ago, and I have been since the beginning of this century anyway.

Q. In 1937 you were elected President of the Oregon State Medical Society? A. I was.

Q. As I understand the custom of the State Medical Society, the year prior to electing a man President they elect a President-elect? A. They do.

Q. So that in the fall of 1936 you were elected President-elect of the State Medical Society? A. Yes, I think that was the year; I think that would have been the year.

Q. You were a member of the Council, then, a year or two after you were President, were you not? A. Yes, I was a member of the Council for several years before

and then, after you are President, you are ex officio a member of the Council, if you care to act. I never attended all those meetings.

Q. You have been ex officio a member of the Council ever since? A. I have.

566 Q. You attended some meetings, did you not, after your retirementment as President? A. Yes, I did.

Q. These charges that were brought against you down there, were they ever tried or what happened to them?

Mr. Marcus: I object, your Honor, on the ground that this has no relation to discovery proceedings.

The Court: Overruled.

Mr. Jaureguy: Should the witness answer?

The Court: Read the question.

The Witness: Answer it?

The Court: Yes, answer it.

A. Might as well tell the honest truth.

Mr. Jaureguy:

Q. That is what we would like to have you do, Doctor. A. Yes. I ignored them. They were so asinine and so disrespectful to a man who had led the fight for medicine in Southern Oregon that I though it was insulting beyond measure and, to be honest with you, somehow they were going to deprive me of my honored membership in the American College of Surgeons and the American Medical Association, and I don't know what else—swore at St. Peter or something, maybe; I don't know.

Mr. Jaureguy:

Q. The Oregon State Medical and the American College of Surgeons— A. None of their business.

567 Q. They didn't do anything like that? A. I don't know what they did, but I ignored them because, you know, those fellows were born years after I had been in practice, and I did not consider that I would be sitting before a committee that had previous experience along that line, at least. There is a suggestion of my standing, when I was honored by as many as 700 men.

I have a copy—and I want Judge McColloch to read it when he takes this up—of my address to the Medical Society in 1938, in which I warned them of this very thing.

I don't know how it came to me, but I had a hunch they were drifting that way, and my warning is in this address,

that they had better sit down around a table and talk these things over among themselves.

Q. So, as far as you know, there never was any hearing on the charges? A. There wasn't because I didn't hear of it even. I wrote a letter a day or two afterwards in which or when I was under heat of passion and I might have said something, some things that I would not say now, but, at the same time, I am not going to deny them.

Q. You mean this letter to Bechtold? A. Yes, because we had seen some of their tactics down there in getting business away from us.

Mr. Marcus: I am going to object to this answer,
568 your Honor, and to the question, on the ground that they are not relevant to the instant proceeding.

The Court: Overruled.

Mr. Marcus: May it be understood that we have a continuing objection?

The Court: So understood.

Mr. Jaureguy: Q. You continued to be a member of the Medical Society? A. I am; yes. I am an honorary member of all of them unless I have been discharged without being notified of it.

Q. You never were notified, were you? A. Never was notified but what I am still a member in good standing.

Q. In your letter to Bechtold you call attention to the fact that a lot of other doctors, if not all of them, in Medford were treating patients of the National Hospital Association. Do you recall that? A. Up to right about that time.

Mr. Marcus: I object to that, your Honor. Just a minute, please. I object not only on the previous grounds but on the ground of relevancy.

It is our position it does not matter whether some doctors cooperated with this Association or not as long as there were doctors who did not cooperate because of the activities of these defendants.

569 The Court: It may save you some time for me to tell you right now that we are going to wash all the dirty linen of the Oregon doctors in this trial. You are just wasting your time if you make objections of the sort you are making now.

Mr. Marcus: Your Honor, we were prepared to make objections on these grounds at the time of trial and to go into the matter at some length as to why these objections

were being made and possibly why the Court should decide that such questions are irrelevant.

Here we are, a month before the trial, involved in this sort of thing. I do not intend to make any argument with respect to the objections I have just stated, but I certainly do intend, at the time of the trial, if the same questions are asked, to make these objections and, at some length, to go into the reasons why such objections have been generally sustained.

The Court: Go ahead. Ask another question.

Mr. Jaureguy:

Q. You say some, if not all, of the doctors practicing in Medford have been cooperating with the National up to this time? A. As far as I know.

Q. Did Mr. Bechtold send you these photostatic copies of checks? A. No, he did not. He thought I was just kind of upset.

Q. You referred to your speech in 1938 when you took office as President? A. No, sir, when I retired, my retiring speech, my last word.

570 Q. I recall reading a speech you made when you assumed office as President before the Council. A. Yes.

Q. You had Alva Person in to take it down. A. I was in office then.

Q. Do you remember that? A. Well, there was some undercurrent, and I tried to harmonize them and I couldn't do it. I had it taken down. I knew what I would say but, at the same time, I knew what I would say would be twisted around and distorted otherwise.

Q. The doctors in Oregon knew of your friendship for Mr. Bechtold and your association with National when they elected you President, didn't they? A. Sure. They were all in the same boat. They were all working. We were not employed by Mr. Bechtold. I never heard him say he had any physicians employed—never heard he had any physicians employed to do his bidding, but one man that had prepaid medical care, and I treated him as a patient, not as Mr. Bechtold's.

Q. There is no question in your mind but what the doctors, when they elected you President-elect in the fall of 1936 and elected you President in the fall of 1937, knew you were cooperating with Mr. Bechtold and his organization? A. I don't know what they knew or what they had

done. Most of the rest of them were—Your Honor, excuse me. Could I say something?

571 The Court: Yes.

A. If Morris Fishbein had not been out here they wouldn't have had the public talking about the practice of medicine and about commercialized medicine, and of course prior to that time things had been very peaceful; but Morris Fishbein, Editor of the American Medical Association paper, was making occasional talks out here and Morris Fishbein was telling them all about this patient-and-doctor relationship.

He never had a patient in his life; he never practiced medicine a day in his life, but he told us how to do it, and told us about commercialized medicine. I suppose that is part of the Hebrew in him. It don't make any difference to me about him being a Hebrew. I didn't hold that against him.

But I do feel he came out here and stirred up more trouble than any man who ever came into the State of Oregon, every time he came.

Every time he came out, he spoke about more efforts and more advanced experience and all that sort of stuff about the practice of medicine, and told the rest of us to keep a cool head and try to do right and so on.

Q. Tell me this. I want you to consider this: Do you feel or did you feel when you were President of the Oregon State Medical Society that you were at the head of a conspiracy to destroy the National Hospital Association?

572 A. Well,—

Mr. Marcus: That clearly calls for a conclusion, your Honor.

The Court: Overruled. Read the question.

(Question read.)

A. No, I didn't look on it as a conspiracy, but during that year—and it was proven by my feelings in that matter in my farewell address to the State of Oregon Medical Association. You will find my sentiments expressed in answer to this very question in that.

Mr. Jaureguy:

Q. Did you, when you were on the Council, conspire with others to destroy the National or the Industrial or

any other commercial hospital association? A. I never have.

Mr. Marcus: Objection again, your Honor.
The Court: Overruled.
Mr. Marcus: It is asking for a conclusion.
The Court: Overruled. Read the question.

A. Answer?

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. Marcus: May I call your attention to this, your Honor, that the very issue in the case is whether there was a conspiracy or not. The facts will show whether there was a conspiracy, what they did.

573 The Court: I know. Have you got the question in mind? A. I think I have.

The Court: All right.

A. No. I have kind of lived, I think, in a little higher plane, and I did not look on it as a conspiracy, but there was a growing tendency about something that looked to me like they were leading into trouble, and I mentioned it in my final address. That tendency was not normal nor right.

Mr. Jaureguy:

Q. The committees of the Oregon State Medical Society, how were they selected? By the President or by the Council? A. No, they were appointed by the President.

Q. You appointed all committees? A. All my committees were appointed. Some of them were appointed and had met together in the years before and I re-appointed them; consulted, maybe, with a friend or two or maybe someone on the Council; but whether they were re-appointed or not was up to me. It was up to every president to appoint his own committees.

Q. The committees you appointed consisted of men that you felt would make desirable persons on those committees? A. Naturally. I did not want my year to be a failure by appointing improper committees, and did the best I could, but I am only human.

Q. Certainly make mistakes like some of the rest of us do. I had hoped as the years went by that we would

574 not, but apparently, when we get along in years, we make mistakes. A. We are still human.

Q. The purpose of the appointment of the committees was to carry out the policies that you wished to be carried out by the State Medical Association? A. Yes, in a general way. I didn't know what problems might come up throughout the year. I answered the question in that address of mine. I wish you would read it sometime.

Q. That sets forth the views you had then at that time? A. Yes, and a lot of them I have not changed either.

Q. Do these things, these copies of letters that we have here, did they have any influence on you in not cooperating with the National Hospital Association or Industrial Hospital Association, or did you continue your practice just the way you had before? A. Well, I continued my own.

Q. Yes. A. I didn't associate with a lawbreaker in any instance or anywhere.

Q. You continued just as you had in the past? These letters did not stop you? A. No. No, sir, because I felt all the charges against me and demands made on me were asinine, unnecessary and unjust.

Q. And you disregarded them? A. I disregarded them, and told them so and why.

Mr. Jaureguy: That will be all, your Honor.

575 Mr. Marcus: We will reserve cross examination. That is all, Doctor.

The Court: You are excused.

The Court: Your motion, Mr. Marcus.

Mr. Marcus: We have prepared a written motion, your Honor.

The Court: Do you want to be heard further than you have already stated?

Mr. Marcus: No, your Honor. Well, just a few remarks. These subpoenas duces tecum were issued at our request, and I do think, in view of the fact that we do not desire to have the subpoenas duces tecum considered further, we think they should be quashed at this time.

The Court: Are you opposing the motion?

Mr. Jaureguy: I do not know whether the opposing party has any right to object to quashing the subpoenas.

I do want to make these remarks, however. My objections will be more of a condition attached to the granting of the motion, and that is that it appears and will appear from the transcript of some of the depositions that, subsequent to the issuance of these subpoenas duces tecum,

the attorneys for the Government visited the parties
576 to whom these subpoenas were issued and obtained from them the documents that the witnesses produced in response to the subpoenas.

That is not true, I think, in every case, but in most cases they had taken them up to Seattle and photostated them and then returned the originals to the witnesses with directions to bring the originals in on these depositions in response to the subpoenas duces tecum.

In my own mind, I question the propriety of that procedure. I think if they were going to try to get these documents with subpoenas they should have done it prior to the time that they served the subpoenas, but, nevertheless, they have them.

Your Honor will recall the witness from the Lumbermen's Hospital who was on the stand the other day. Yesterday morning Mr. Veazie called me and told me the Lumbermen's Hospital would like to get those documents back right away, if they could.

I told him I certainly would expedite the matter, and then he told me that the Government had photostatic copies. I requested of Mr. Marcus that he permit me to see the photostatic copies. My thought was that from glancing over the photostats and comparing them with the originals I would be in a position to admit authenticity.

However, Mr. Marcus took the position that he would not show them to me nor show me any photostats
577 that they had obtained from any of these witnesses until such time as they saw fit to introduce them in the pre-trial proceedings and have pre-trial numbers put on them, and I got the impression that some of the documents they would not have marked with pre-trial exhibit numbers.

I think as a condition to granting the motion—At least I wish to request—that the court order the Government to furnish us a list of all documents which they have obtained from any of these witnesses, whether photostated or not, and also to permit us to examine the photostatic copies.

As far as the second and third grounds are concerned, your Honor has already ruled that they are not; that is, your Honor has ruled that we may properly examine them.

In so far as the last half of the first ground is concerned, your Honor has, I think, agreed with us that we are not

endeavoring to elicit testimony that goes beyond discovery. At least, I am not conscious of that, that it goes beyond discovery.

Therefore, I do request that if the Court grants the motion that it will also order them to furnish the information requested.

Mr. Marcus: May I say, your Honor, in respect to Mr. Jaureguy's remarks that I am informed by my colleague that, with respect to the subpoenas duces tecum in no instance have we examined the documents, so we are in the same position as the defendants.

578 With respect to those documents which were brought into court yesterday, they are in court, and the defendants have the opportunity to examine them. Why should they want to look at our photostats? We are actually working with these photostats in many instances. In certain cases I myself have selected some of these photostats and placed them in folders to be handed over to the Reporter for pre-trial marking purposes.

In some instances I have put them in selected places, in connection with other documents which are going to be turned over to the Reporter so that they make some kind of a story.

As I say, again, these documents are in court and are available to Mr. Jaureguy and to Mr. Coughlin. In respect to the other subpoenas duces tecum that are outstanding, we have not examined any of those documents.

Mr. Jaureguy: Anyhow, we are talking about something that is a little bit off from this subject, but I wanted my position to be made clear. It is my understanding that assurance has been given these witnesses who have appeared, as such, with these documents, that these documents will not remain here in court from now until the time of trial—I may be wrong on that, but I will have to say that, in view of the fact that they are here now and that I could readily compare them with photostats, if at the trial photostats are offered, I will not admit the authenticity of them or that they are correct copies, as I have en-

579 deavored to do in the past with photostats, where I have had access to the originals because they are in our files or something of the kind or in the files of some of the defendant societies.

Mr. Marcus: Mr. Jaureguy has the same right to photostat documents that we have. I don't understand his argument. Are we to go to the trouble of photostating doc-

uments for him to look at? In many instances we are not going to use a number of these documents. The mere fact that we photostat documents is not enough to allow him to have those. He is in a position to photostat documents himself. As I have told your Honor, I have already conducted a good many of these trials. These documents, placed in folders for the purpose of pre-trial marking, will be turned over, after they are marked, to Mr. Jaureguy; and what Mr. Jaureguy has been doing, and what he said to me he would do, would be to look over these documents and then let us know whether he is going to object on the ground of authenticity or admissibility.

The Court: He says he cannot be expected to admit the authenticity of the photostat unless he has had a chance to see the original.

Mr. Marcus: Well, your Honor, I suppose that is a reflection on me, because I had an understanding with Mr. Jaureguy that he was not going to object to the use of photostats. We have turned over as pre-trial exhibits a number of photostats of documents which have been
580 taken from the defendants. For instance, referring to Mr. Bechtold's deposition, we turned over to Mr. Jaureguy a number of letters written by doctors in various parts of the state, and Mr. Jaureguy did not object to their authenticity, although he had never seen the originals.

Mr. Jaureguy: I had, though. That is where he is mistaken.

The Court: The motion is allowed. The motion to quash is allowed.

Mr. Jaureguy: And my oral motions will be denied?

The Court: Put your motions in writing, Mr. Jaureguy.

Mr. Jaureguy: Very well.

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581 Portland, Oregon
Friday, Sept. 9, 1949

BEFORE:

Honorable Claude McColloch, *Judge*.

APPEARANCES:

Mr. Gerard G. Galassi, Attorney, Seattle Office, Anti-Trust Division.

Mr. Isadore Cohen, Attorney, Seattle Office, Anti-Trust Division.

Mr. Robert H. Weinstein, Attorney, Seattle Office, Anti-Trust Division.
For the Plaintiff.

Mr. Nicholas Jaureguy, of Attorneys for the Defendants.

Mr. Cohen: I believe, your Honor, Mr. Jaureguy should speak first, inasmuch as he was supposed to have gone down and looked at the apple boxes, to see the files, and report back to your Honor this morning.

Mr. Jaureguy: I am ready, your Honor, at most any time. As I understand it, this is a continuation of the motion for subpoenas duces tecum against the Oregon State Medical Society and the Multnomah County Medical Society, of a very sweeping nature. I assume it is not necessary or desirable to try to analyze it further. The alternative is to permit the attorneys to go down and ransack the files, go through them. Your Honor suggested, after
582 hearing about the deplorable condition of the files, I might say, that I go down and have a look at them myself, which I have done.

I spent considerable time down there, and I want to say the disorder which was described by Mr. Foley was very much of an understatement. I am glad I am not called upon to defend the filing system of the Oregon State Medical Society.

I do not know exactly how to describe it, except that after I got in this room, which is his private office, I found an armchair piled up with correspondence and statements and things.

As to last year's accumulation, I checked up and found certain letters and things going back to October, 1948.

I have made certain notes that I may refer to here and there as I go along.

Prior to 1937 most of the files and documents and correspondence are in pretty fair shape because—Pardon me for laughing—in 1937 they employed a high-powered outfit to set up a filing system for them. This outfit put in the proper files all documents up to that date, but that is the end of it. They never continued to do anything about it, until up to 1937—some date around that which I did not get.

Stacked also on the floor in the office there were a couple of boxes labeled "M & F," the "M & F file." Then I found that meant Meier & Frank Company. Anyway, they
583 were little boxes two inches thick with little covers on them, to put things in. I found altogether there were twenty-three of them and they included miscellaneous things prior to 1937.

I looked in one file which I picked up which was labeled "A" on the outside. A found a lot of things in there and I didn't understand why it was labeled "A." Some of that Mr. Foley explained by saying, "That has nothing to do with the Multnomah County Medical Society" and "I don't know how that got in there." I didn't go further in that search.

I found there were five boxes. Some had one year's accumulation in them and some had two. Mr Foley said that they had had other boxes but, on being called upon to furnish documents and to answer interrogatories, he had taken out a lot of those, and I found those papers and things just on the shelves, papers for various years.

Then, on one shelf there were a bunch of folders, colored folders that fold over, something like these, so I had him name off to me what labels were on the outside. There were ten of those lying there, just lying there on the shelf.

I will just name off a few so as to give your Honor a general idea. The 1940 file shows "Federal Resettlement Administration; Wagner Bill."

The 1939 file shows "Medical Section" and "The Transparent Woman," "1938-1939 Annual Session," and "1939 Annual Session." I questioned that because there were three of them put in different places, but that is
584 what they were. Then there was "Miscellaneous Correspondence, 1938 and 1939."

Then I found these documents up to 1937 in regular steel filing cases. There were two rows of those—four filing cases, I think. Those were all located in this private office.

Then there was another filing case—four of them, in fact. He said, "Those are miscellaneous things that come up every now and then. When some committee has something and they hand me a folder, I will put some of them in there." Of course, he did not put all of them in there because I saw one or two in the apple boxes—I call them apple boxes. They are cardboard boxes.

I thought I ought to have a general idea of what these files were, so I had him name off about half of the files.

The first was "Receipted Bills." The second file, "Pamphlets and Publications; State Industrial Accident; Pending Legislation, 1945; House of Delegates, Annual Session 1945; Committee on Publications 1945; Medical Preparedness," and then there were several subheadings under "Medical Preparedness."

The next was "Appointment of Examining Physicians—" These were under "Medical Preparedness." Then there were "Medical Advisory Boards; Induction Boards," and so forth.

The next file was "Northwest Medicine; Farm Security Administration; Portland Isolation Hospital."

585 That was one-half of one of these files. I didn't go further on that. There were a lot of things of that type.

Then, in another room, they had one filing case which was labeled "Bureau of Medical Economics." They have somebody there who was, I think, an assistant, labeled an assistant to the secretary, a good deal of whose time is devoted to the Bureau of Medical Economics. There were a lot of files. I looked in some of them. Some had nothing at all in them and others had just a constitution and bylaws or something in the form of a contract or something of that kind.

I think that pretty well covers a general outline of the situation. There was another file located, a file containing papers relating to disciplinary proceedings, and from this file we obtained copies of the documents that we have furnished them. These we furnished them were on the disciplinary proceedings, I mean charges that were filed, the members of the board that sat on them, the disposition of the charges by the board, the recommendation of the Board of Censors and the action by the Council.

I think that gives a general picture of what I saw down there.

The Court: These boxes with correspondence in, you found those?

Mr. Jaureguy: I found five boxes. The rest of them—As I say, he had taken them out of the boxes when he

586 was looking for this information and looking for these documents, and had put them up on the shelves. The contents of certain boxes were up on one of the shelves.

The Court: How big were the boxes?

Mr. Jaureguy: They were of various sizes. It probably is not correct to say that one year's correspondence would fill an apple box. One box there, about the size of an apple

box, I think had two years' correspondence in it. As I recall, that was several years ago. Last year's I would say would probably fill an apple box.

The Court: Foley is not a doctor, is he?

Mr. Jaureguy: No, he is not a doctor.

The Court: Do you happen to know what salary he is paid? Is it a large salary?

Mr. Jaureguy: I don't know what salary he gets. I just have the recollection of seeing in the minutes, which of course have been made available to counsel, something stating his salary, but I do not recall what it was. Just offhand, as an offhand guess, I think he probably started off over twenty years ago at about $200 a month and I think he has been raised from time to time. I think he probably gets—I don't know. It would be a guess, but I think he probably gets $6,000 or $6,500, but I don't know.

The Court: What clerical help does he have?

Mr. Jaureguy: I think there were two young ladies
587 in there, but they had something else in the office, some physicians' referral bureau. If you want a physician in an emergency, you call up this same office. I think there were two women in there and two men in there. Both men I have met before. I don't remember their names.

The Court: How many rooms in the suite?

Mr. Jaureguy: Well, there is one, a kind of a V or cross-shaped room there, one room but it goes around the corner. Then there is a private office—

The Court: What building is it in?

Mr. Jaureguy: It is on the first floor of the Medical-Dental Building. If your Honor would like to go down with counsel and see it—

The Court: I stay away from there the best I can.

Mr. Jaureguy: I have tried to describe it, but I don't know as I have accurately described it. His office is what we call an inside office. It does not have an outside window, but it is a pretty fair-sized office.

The Court: Have any of you gentlemen ever been over there?

Mr. Galassi: No, your Honor. We have wanted to go over there, especially since these subpoenas were moved for.

Mr. Jaureguy: Their FBI man has been there. Certainly there is nothing—I don't think I have ever indicated that if they wanted to go over and call on Mr. Foley there would be any objection, as long as they do not try to